TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947 48

No. 52 3

ESTATE OF SIDNEY M. SPIEGEL, DECEASED, KATHERINE J. SPIEGEL AND ROBERT MICHELS, SURVIVING EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF SIDNEY M. SPIEGEL, DECEASED, PETITIONERS,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 21, 1947.

CERTIORARI GRANTED APRIL 28, 1947.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No.

ESTATE OF SIDNEY M. SPIEGEL, DECEASED, ET AL., ETC.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

In the United States Circuit Court of Appeals For the Seventh Circuit

No. 8932

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

ESTATE OF SIDNEY M. SPIEGEL, DECEASED, ET AL., ETC.,
Respondents.

U. S. C. C. A. - 7
FILED
MAY 4 - 1946
KENNETH J. CARRICK
CLERK

Petition for Review of Decision of the Tax Court of the United States.

TRANSCRIPT OF RECORD FILED SEP. 22, 1945.
PRINTED RECORD.

In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8932

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

ESTATE OF SIDNEY M. SPIEGEL, DECEASED, ET AL., ETC.,

Respondents.

Petition for Review of Decision of the Tax Court of the United States.

USCA 1563 The Gunthorp-Warren Printing Co., Chicago—5-3-46—50

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1 Estate of Sidney M. Spiegel, Deceased, Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors, Under The Last Will and Testament of Sidney M. Spiegel, Deceased, *Petitioner,*
vs.
Commissioner of Internal Revenue, *Respondent.* } Docket No. 1662

Appearances:

For Taxpayer:
Harry Thom, Esq.,
Benjamin A. Ragir, Esq.,

For Comm'r:
Harold H. Hart, Esq.

DOCKET ENTRIES.

1943

May 14—Petition received and filed. Taxpayer notified. Fee paid.

May 15—Copy of petition served on General Counsel.

Jul. 3—Answer filed by General Counsel.

Jul. 3—Request for hearing in Chicago, Illinois, filed by General Counsel.

Jul. 7—Notice issued placing proceeding on Chicago, Ill., calendar. Answer and request served.

1944

Jul. 24—Hearing set September 25, 1944 in Chicago, Illinois.

Sep. 26—Hearing had before Judge Sternhagen on merits. Stipulation of facts and motion to amend petition, motion granted, filed at hearing. Briefs due per rules.

Oct. 3—Copy of motion to amend petition filed by General Counsel.

Oct. 25—Transcript of hearing 9/26/44 filed.

Oct. 26—Brief filed by General Counsel.

Nov. 10—Brief filed by taxpayer 11/10/44. Copy served.

Nov. 25—Reply brief filed by General Counsel. Served 11/27/44.

1945

Feb. 24—Findings of fact and memorandum opinion rendered, Judge Sternhagen. Decision will be entered under Rule 50. 1/26/45 Copies served.

Mar. 26—Computation of deficiency filed by General Counsel.

Mar. 28—Hearing set April 11, 1945 on settlement.

Apr. 2—Consent to settlement filed by taxpayer.

Apr. 3—Decision entered, Judge Sternhagen. Div. 10.

Jun. 29—Petition for review by U. S. Circuit Court of Appeals, 7th Circuit, filed by General Counsel.

Jun. 29—Statement of points to be relied upon, filed by General Counsel.

Jun. 30—Notice of filing petition for review and statement of points sent to Harry Thom, filed.

Jul. 4—Proof of service filed.

Jul. 20—Proof of service of petition for review and statement of points filed. (2)

Jul. 28—Motion for extension to 9/26/45 to prepare and transmit record filed.

2 1945

Jul. 28—Order entered extending time to 9/26/45 to prepare and transmit the record, entered.

Sep. 11—Designation of portions of record filed by General Counsel.

3 THE TAX COURT OF THE UNITED STATES.

Estate of Sidney M. Spiegel, Deceased, Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors under the Last Will and Testament of Sidney M. Spiegel, Deceased, *Petitioners*, *vs.* Commissioner of Internal Revenue, *Respondent*.	Docket No. 1662

PETITION.

(Filed May 14, 1943.)

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (ET:TDB:1st Illinois: Estate of Sidney M. Spiegel) dated February 16, 1943, and as a basis of their proceeding allege as follows:

1. Petitioners are the duly appointed, qualified and acting executors under the Last Will and Testament of Sidney M. Spiegel, deceased, with office address at 540 N. Michigan Ave., Chicago, Illinois. The estate tax return here involved was filed with the Collector of Internal Revenue for the First District of Illinois.

4 2. The notice of deficiency (a copy of which is attached hereto and marked "Exhibit A") was mailed to the petitioners on February 16, 1943.

3. The taxes in controversy are estate taxes and in the amount of approximately $459,188.58; petitioners claim a refund of approximately $4,400.00.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in including in the gross estate of the decedent the sum of $1,140,606.30 or any other amount on account of the value of property which was transferred by said decedent in his lifetime to Modie J. Spiegel and Sidney M. Spiegel as Trustees under trust agreement dated January 2, 1920.

(b) The Commissioner of Internal Revenue erred in failing to allow as a deduction from the value of the decedent's gross estate the sum of $10,000.00, being additional attorney's fees incurred or to be incurred by said executors in and about the administration of the decedent's estate.

(c) The Commissioner of Internal Revenue erred in failing to allow as a deduction from the value of the decedent's gross estate the sum of $3,000.00, being additional miscellaneous administration expenses incurred or to be incurred by said executors in and about the administration of the decedent's estate.

(d) The Commissioner of Internal Revenue erred in failing to allow as a deduction from the value of the decedent's gross estate the sum of at least $10,000.00, being executors' commissions to be incurred in and about the administration of the decedent's estate.

5. The facts upon which the petitioners rely as a basis of this proceeding are as follows:

(a) Under date of January 2, 1920, decedent executed and delivered a trust indenture to Modie J. Spiegel and Sidney M. Spiegel, as trustees, pursuant to which he set up an irrevocable trust for the primary benefit of his three children, Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Julia K. Spiegel, respectively. A copy of said trust indenture is attached hereto as Exhibit B. Under the terms of said agreement the trustees were to divide the net income into three equal parts and pay or use one of said parts of said income to or for the maintenance, support and education of each of the primary beneficiaries. Upon the death of Sidney M. Spiegel, the trustees were to divide said trust fund and any accumulated income thereon equally among said three primary beneficiaries or if any of said beneficiaries were dead at said distribution date, the share of such deceased child was to go to the surviving child or children of such deceased child, or if such deceased child died without leaving any surviving child or children, then the share of such deceased child was to go to the donor's remaining children and the descendants of any deceased child of the donor, per stirpes and not per capita. All three primary beneficiaries were alive at the date of Sidney M. Spiegel's death and received their respective shares of the trust estate.

7 In his said notice of deficiency, the Commissioner has held that the transfers to said trust were made to take effect in possession or enjoyment at or after the grantor's death. The petitioners contend that the transfer of said property was complete and absolute when the property was transferred to said trustees and said transfers were not made by the decedent to take effect in possession or enjoyment at or after his death. The executors filed their Federal estate tax return with the Collector of Internal Revenue at Chicago, Illinois, on March 19, 1942 and on said date paid the Federal estate taxes shown on said return of $180,404.41.

(b) Petitioners have become and will hereafter become liable for attorneys' fees (in addition to the $6,000 heretofore paid by petitioners as attorneys' fees and set out in their original estate tax return heretofore filed by the petitioners) in connection with the administration of said estate and particularly in connection with this proceeding in a total sum as yet undetermined, but not less than
8 $10,000.00.

(c) Petitioners have become and will hereafter become liable for miscellaneous administration expenses (in addition to the miscellaneous administration expenses set out in the estate tax return) in a total amount as yet undetermined, but not less than $3,000.00.

(d) Petitioners are entitled to executors' commissions in the sum of not less than $10,000.00 and claim a deduction therefor from the gross estate.

Wherefore, the petitioners pray that this Court may hear the proceeding and decide that they are not liable for any additional estate taxes, but are entitled to a refund of estate taxes heretofore paid in the amount of $4,400.00, or such greater amount as is legally refundable.

Harry Thom
Benjamin A. Ragir
231 S. La Salle Street,
Chicago, Illinois.
Attorneys for Petitioners.

Mayer, Meyer, Austrian & Platt,
Of Counsel

9 State of Illinois, } ss.
County of Cook. }

Sidney M. Spiegel, Jr., being first duly sworn, says that he is one of the petitioner above named and a duly appointed and acting Executor under the Last Will and Testament of Sidney M. Spiegel, deceased; that he is duly authorized to verify the above and foregoing petition; that he has read the above and foregoing petition and is familiar with the statements contained therein and that the statements contained therein are true, except those, which are stated to be upon information and belief, and that, as to those, he believes them to be true.

Sidney M. Spiegel, Jr.

Subscribed and sworn to before me this 12th day of May, 1943.

William C. Brooks,
Notary Public.

10 State of Illinois, } ss.
County of Cook. }

Katherine J. Spiegel, being first duly sworn, says that she is one of the petitioners above named and a duly appointed and acting Executor under the Last Will and Testament of Sidney M. Spiegel, deceased; that she is duly authorized to verify the foregoing petition; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein, and that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

Katherine J. Spiegel.

Subscribed and sworn to before me this 12th day of May, 1943.

William C. Brooks,
Notary Public.

11 State of Illinois, }
County of Cook. } ss.

Robert Michels, being first duly sworn, says that he is one of the petitioners above named and a duly appointed and acting Executor under the Last Will and Testament of Sidney M. Spiegel, deceased; that he is duly authorized to verify the above and foregoing petition; that he has read the above and foregoing petition and is familiar with the statements contained therein and that the statements contained therein are true, except those, which are stated to be upon information and belief, and that, as to those, he believes them to be true.

Robert Michels.

Subscribed and sworn to before me this 11th day of May, 1943.

Maurice A. Hadesman,
Notary Public.

12 EXHIBIT A.

Treasury Department
Internal Revenue Service.

Office of
Internal Revenue Agent
in Charge
Chicago Division
105 W. Adams Street
ET:TDB

February 16, 1943.

Mr. Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors of the Estate of Sidney M. Spiegel, deceased,
540 North Michigan Avenue,
Chicago, Illinois.

Sirs:

You are advised that the determination of the estate tax liability of the above-named estate, discloses a deficiency of $454,788.58, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Chicago, Illinois, for the attention of the Estate Tax Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,
Guy T. Helvering,
Commissioner.
By (sgd.) E. C. Wright,
Internal Revenue Agent in Charge.

Enclosures:
Statement
Form of waiver
Form 272M

13 Statement

Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors of the Estate of Sidney M. Spiegel, deceased, 540 North Michigan Avenue, Chicago, Illinois.

	Liability	Assessed	Deficiency
Estate Tax	$635,192.99	180,404.41	454,788.58

The following statement shows the final determination of this office in connection with the preliminary notice (30 day letter) issued December 10, 1942, and protest filed on January 9, 1943:

Adjustments to net estate

Net estate for basic tax as disclosed by return		$ 841,042.81
Additions to value of gross estate and decreases in deductions:		
Stocks and Bonds	$ 6,710.98	
Mortgages, notes and cash	3,838.80	
Transfers	1,140,606.30	
Debts of decedent	33.13	1,151,189.21
		$1,992,232.02
Reduction in value of net estate and decreases in deductions		0.00
Net estate for basic tax as adjusted		$1,992,232.02
Net estate for additional tax as adjusted		$2,052,232.02

Explanation of adjustments

Stocks and Bonds	Returned	Determined
Item 3	0.00	360.00
" 4	0.00	1,206.00
" 11	0.00	120.00
" 12	0.00	630.00
" 16	0.00	150.00
" 17	0.00	350.00
" 18	0.00	175.00
" 20	0.00	139.20
" 24	0.00	625.00
" 25	0.00	300.00
" 30	0.00	73.80
" 34	0.00	269.83
" 39	0.00	1,020.00
" 44	0.00	375.00
14 " 45	0.00	900.00
" 48	100.92	99.17
" 53	77.77	76.67

The determined values of items 3, 4, 11, 12, 16, 17, 18, 20, 24, 25, 30, 34, 39, 44, 45 represent dividends on shares of stock payable subsequent to date of decedent's death to holders of record of a date prior to decedent's death.

The determined values of items 48 and 53 represent interest accrued to date of decedent's death.

Mortgages, notes and cash	Returned	Determined
Item 5	2,874.27	4,911.19
" 9	0.00	1,801.88

The determined value of item 5 is based upon reliable information procured by this office during the course of the investigation.

The determined value of item 9 represents the amount received by the estate in final settlement.

Transfers Unreturned items	Returned	Determined
1—Cash	0.00	74,228.35
2— 4 shares, common capital stock of Amerix Holding Corporation @ 12¼	0.00	49.00
3— 500 " common capital stock of American Can Company @ 86⅜	0.00	43,187.50
4— 160 " common capital stock of American National Bank and Trust Company @ 225	0.00	36,000.00
5— 400 " common capital stock of American Railways Corporation @ ¾	0.00	300.00
6— 200 " common capital stock of Archer-Daniels-Midland Company @ 30	0.00	6,000.00
7— 100 " common capital stock of Arlington Mills Company @ 29	0.00	2,900.00
8— 150 " 5% preferred capital stock of Associates Investment Company @ 94¾	0.00	14,212.50
8— Dividend	0.00	187.50
9— 600 " common capital stock of Associates Investment Company @ 35½	0.00	21,300.00
9— Dividend	0.00	900.00

15					
10—	100	"	5% common preferred capital stock, Building Realty Company @ 85	0.00	8,500.00
11—	500	"	common capital stock Burrows Adding Machine Company @ 7½	0.00	3,750.00
12—	200	"	common capital stock Celotex Company @ 6¼	0.00	1,250.00
13—	1000	"	common capital stock, Central Public Utility Corporation @ 0	0.00	0.00
14—	100	"	7% preferred capital stock, Central and S. W. Utilities Company @ 106	0.00	10,600.00
14—			Dividend	0.00	175.00
15—	38	"	common capital stock, Chase National Bank Company @ 32¾	0.00	1,249.25
16—	4	"	4% Class A preferred capital stock, Chesapeake and Ohio Railway Company @ 100	0.00	400.00
17—	200	"	common capital stock, Chesapeake and Ohio Railway Company @ 41½	0.00	8,300.00
17—			Dividend	0.00	125.00
18—	200	"	common capital stock Chicago Railway Equipment Company @ 16	0.00	3,200.00
19—	600	"	common capital stock, Cliffs Corporation @ 16¾	0.00	10,125.00
20—	65	"	common capital stock, Community Public Service Company @ 23	0.00	1,495.00
21—	12	"	common participating certificates, Consolidated Office Building Company @ 0	0.00	0.00

22—	1000	"	common capital stock, Consolidated Oil Corporation @ 5⅝	0.00 5,625.00
23—	480	"	common capital stock, Continental Can Company @ 36¾	0.00 17,700.00
24—	200	"	common capital stock, Creole Petroleum Corporation @ 12⅞	0.00 2,575.00
25—	400	"	common capital stock, Curtis Manufacturing Company @ 7	0.00 2,800.00
26—	800	"	common capital stock, Distillers Corporation, Seagrams, Limited, @ 18¼	0.00 14,600.00
27—	100	"	common capital stock, Fullerton Amusement Company @ 0	0.00 0.00
28—	100	"	3% preferred capital stock, Gardner-Denver Company @ 17	0.00 1,700.00
28—			Dividend	0.00 25.00
29—	66	"	common, Class A, capital stock, General Analine and Film Corporation @ 56	0.00 3,696.00
30—	900	"	common capital stock, General Electric Company @ 32¼	0.00 29,025.00
30—			Dividend	0.00 720.00

16

31—	300	"	common capital stock, General Tire and Rubber Company @ 11½	0.00 3,450.00
32—	400	"	50¢ non-cum. Pfd. stock, Globe News Publishing Company @ 11	0.00
33—	400	"	common capital stock, Globe News Publishing Company	0.00 4,400.00

34—	500	"	common capital stock, Granite City Steel Company @ 13¼	0.00	6,625.00
			Dividend	0.00	125.00
35—	100	"	common capital stock, Holland Furnace Company @ 30⅜	0.00	3,037.50
36—	200	"	common capital stock, International-Nickel of Canada, Ltd., @ 22⅞	0.00	4,575.00
37—	680	"	common capital stock, Iowa Public Service Company @ 3⅞	0.00	2,635.00
38—	200	"	common capital stock, Jefferson Electric Company @ 20¼	0.00	4,050.00
38—			Dividend	0.00	250.00
39—	300	"	common capital stock, Jones and Laughlin Steel Corporation @ 33⅜	0.00	10,012.50
40—	108	Stock	transfer certificates, Knickerbocker Building Corporation @ 52	0.00	5,616.00
41—	200	shares,	common capital stock, Libby-Owens Ford Glass Company, @ 40¼	0.00	8,025.00
42—	100	"	common capital stock, Ludlow Mfg. Associates @ 103	0.00	10,300.00
43—	52	"	common participating certificates, Mar-Main Corporation @ 0	0.00	0.00
44—	100	"	common capital stock of Mergenthaler Linotype Company @ 23¼	0.00	2,325.00
45—	40	"	common capital stock of Metropolitan Playhouses, Inc., @ 0	0.00	0.00
46—	1000	"	common capital stock, Michigan Sugar Company @ ½	0.00	500.00
47—	1000	"	common capital stock, Missouri-Kansas-Texas R. R. Co. @ ⅜	0.00	375.00

48—1359	"	common capital stock, Monsanto Chemical Company @ 80⅞	0.00	109,909.13
49— 342	"	common capital stock, Montgomery Ward and Company, Inc., @ 36½	0.00	12,483.00
50— 150	"	preferred capital stock, Murray Wolbach Associates, Inc., @ 94	0.00	14,100.00
51— 150	"	common capital stock, Murray Wolbach Associates, Inc., @ 1	0.00	150.00
17				
52— 150	"	5% preferred capital stock, National Bond and Investment Company @ 86¾	0.00	13,012.50
52—		Dividend	0.00	187.50
53— 650	"	common capital stock, National Bond and Investment Company @ 13	0.00	8,450.00
53—		Dividend	0.00	682.50
54—1000	"	common capital stock, National Cylinder Gas Company @ 10¾	0.00	10,750.00
54—		Dividend	0.00	200.00
55— 500	"	common capital stock, National Power and Light Company @ 6¾	0.00	3,375.00
56— 500	"	common capital stock New York Central Railroad Company @ 13	0.00	6,500.00
57— 360	"	common capital stock, Newport Industries, Inc., @ 7¾	0.00	2,790.00
58—1000	"	common capital stock of The Ohio Oil Company @ 6¾	0.00	6,750.00
59— 90	"	Non-cum. preferred capital stock of Ohio Service Holding Corporation @ 51½	0.00	4,635.00

60—	30	"	common capital stock of Ohio Service Holding Corporation @ 43½	0.00	1,305.00
61—	600	"	common capital stock, Oliver Farm Equipment Company @ 16⅞	0.00	10,125.00
62—	500	"	common capital stock, Otis Steel Company @ 9¼	0.00	4,625.00
63—	200	"	common capital stock, Paraffine Companies, Inc., @ 34⅜	0.00	6,875.00
63—			Dividend	0.00	100.00
64—	301	"	common capital stock, Parke, Davis and Company @ 29¾	0.00	8,954.75
65—	880	"	Class B capital stock, Pennsylvania Gas and Electric @ 8¢	0.00	70.40
66—	700	"	Common capital stock, The Pennsylvania Railroad Company @ 21⅝	0.00	15,137.00
67—	50	"	Common capital stock, Radio Corporation of America @ 4½	0.00	225.00
67—			Dividend	0.00	10.00
18					
68—	180	"	6% preferred capital stock, Radio-Keith Orpheum Corporation @ 42¼	0.00	7,605.00
69—	900	"	common capital stock, Radio-Keith Orpheum Corporation @ 3½	0.00	3,150.00
70—	100	"	V. T. Partic. Certificate, Randolph Hotel Co @ 9¾	0.00	975.00
71—	300	"	common capital stock, Reynolds Metal Co. @ 12¼	0.00	3,675.50
71—			Dividend	0.00	90.00

72—	500	"	common capital stock, H. H. Robertson Company @ 18½	0.00	9,250.00
73—	900	"	common capital stock, The Ruberoid Company @ 15¾	0.00	14,175.00
73—			Dividend	0.00	900.00
74—	500	"	common capital stock, Sangamo Electric Company @ 21⅜	0.00	10,687.50
74—			Dividend	0.00	500.00
75—	200	"	common capital stock, Schenley Distillers Corporation @ 10⅝	0.00	2,125.00
76—	1000	"	common capital stock, Sears, Roebuck Company @ 75⅝	0.00	75,625.00
77—	300	"	Class A common capital stock, Serrick Corporation @ 4⅛	0.00	1,237.50
78—	200	"	common capital stock, Simmons Company @ 19¾	0.00	3,950.00
79—	400	"	common capital stock, Sioux City Gas & Electric Company @ 13¾	0.00	5,500.00
80—	500	"	common capital stock, Southern Pacific Company @ 7⅝	0.00	3,812.50
81—	200	"	common capital stock, Southern Ry. Company @ 12	0.00	2,400.00
82—	204	"	common capital stock, Spencer-Kellogg & Sons, Inc., @ 20¼	0.00	4,131.00
83—	500	"	common capital stock, Standard Oil Co. of California @ 18	0.00	9,000.00
84—	208	"	common capital stock, Standard Oil Co. of New Jersey @ 33¼	0.00	6,916.00
85—	200	"	common capital stock, Standard Steel Spring Company @ 29½	0.00	5,900.00

86—	700	"	common capital stock, Texas Gulf Sulphur Co. @ 36⅝	0.00 25,637.50
87—	50	"	common capital stock, Todd Shipyards Corporation @ 89	0.00 4,450.00
88—	1000	"	common capital stock, Tri-Continental Corporation @ 1½	0.00 1,500.00
19				
89—	600	"	common capital stock, Union Carbide and Carbon Company @ 68	0.00 40,800.00
90—	300	"	common capital stock, The United Corporation @ 1¼	0.00 375.00
91—	300	"	common capital stock, Wheeling Steel Corporation @ 28	0.00 8,400.00
92—	500	"	V. T. Certificates, Wickwire Spencer Steel Company @ 4⅞	0.00 2,437.50
93—	400	"	common capital stock, Wm. Wrigley, Jr., @ 80¼	0.00 32,050.00
94—	$5,000.00	face value, 4% Baltimore and Ohio R. R. Co. bonds, due 8/4/44 @ 55		0.00 2,750.00
94—		Accrued interest		0.00 76.67
95—	$20,000.00	face value 5% Canadian National Ry. Co. bonds due 10/1/69 @ 96½		0.00 19,300.00
95—		Accrued interest		0.00 216.67
96—	$10,000.00	face value, 7% Dept. of Cauca Valley bonds, due 1948 @ 8		0.00 800.00
97—	$25,000.00	face value, 5% Central of Georgia Ry. Co. bonds due 1945 @ 5¼		0.00 1,281.25
98—	$20,000.00	face value, 5%, Series C, Central of Georgia Ry. Co. bonds due 1959 @ 1		0.00 200.00

99—	$50,000.00	face value 5½%; Central Public Utility Corporation bonds due 1952 @ 1	0.00	500.00
100—	$5000.00	face value, 5% Central States Electric Corp. bonds due 1948 @ 27⅞	0.00	1,381.25
100—		Accrued interest	0.00	116.65
101—	$ 10,000.00,	face value, 5½%, Central States Electric Corp. bonds due 1954, @ 28⅝	0.00	2,862.50
101—		Accrued interest	0.00	143.61
102—	$ 15,000.00,	face value, 5%, Gen. Mtg. Chicago and Eastern Illinois Ry. Co. bonds, due 1951 @ 14¾	0.00	2,212.50
103—	$ 12,000.00,	face value, 5%, Chicago and Eastern Illinois Ry. Co. bonds, due 1951 @ 14⅞	0.00	1,770.00
104—	$ 10,000.00,	face value, 6%, Chicago, Indianapolis & Louisville Ry. Co. bonds due 1947 @ 17⅝	0.00	1,762.50
20.				
105—	$104,000.00,	face value, 4¾%, Chicago & Northwestern Ry. Co. bonds due 1949 @ 1⅛	0.00	1,170.00
106—	$ 10,000.00,	face value, 5%, City Service Co. bonds due 1958, @ 84¼	0.00	8,412.50
106—		Accrued interest	0.00	108.33
107—	$ 35,000.00,	face value, City of Chicago Special Assessment vouchers at sale price	0.00	15,000.00
107—		Accrued interest	0.00	1,027.49
108—	$ 2,560.00,	face value, City of Chicago Special Assessment bonds @ 100	0.00	2,560.00
109—	$. 6,000.00,	face value, 3% Consolidated Office Building Co. bonds due 1954 @ 6.48	0.00	388.80

110	$ 15,000.00,	face value, 6½%, Cosgrove-Meehan Coal Corp. bonds due 1945 @ 4¾	0.00	712.50
111	$ 40,000.00,	face value, 5%, Erie Railroad Co. bonds, due 1975, @ 18⅜	0.00	7,350.00
112	$ 10,000.00,	face value, 5%, Erie Railroad Co. bonds, due 1967, @ 18⅜	0.00	1,837.50
113	$ 6,000.00,	face value, 5%, Fallansbee Bros. Co. bonds, due 1947, @ 36	0.00	2,160.00
114	$ 5,000.00,	face value, Globe News Publishing Co. @ 0	0.00	0.00
115	$ 5,000.00,	face value, 3%, Hotel Syracuse, Inc. bonds due 1955, @ 77	0.00	3,850.00
115		Accrued interest	0.00	57.50
116	$ 5,000.00,	face value, 5% Indiana Service Corp. bonds, due 1950 @ 74⅜	0.00	3,718.75
116		Accrued interest	0.00	116.67
117	$ 9,000.00,	face value, 4% Mar-Main Corporation bonds, due 1947 @ 102	0.00	9,180.00
117		Accrued interest	0.00	138.00
21				
118	$ 5,500.00,	face value, 5%, Metropolitan Playhouse bonds, due 1945, @ 66	0.00	3,630.00
118		Accrued interest	0.00	183.32
119	$ 25,000.00,	face value, 6%, Midland Utility Co. bonds, due 1938, @ 61	0.00	15,250.00
120	$ 10,000.00,	face value, 6%, Midland Utility Co. (C. D.'s), due 1938, @ 61½	0.00	6,150.00
121	$ 30,000.00,	face value, 4%, Missouri Pacific Ry. bonds, due 1975, @ 1⅜	0.00	412.50

122	$ 10,000.00,	face value, 4¾ Morgan County School District bonds, due 1942, @ 107	0.00	10,700.00
122		Accrued interest	0.00	142.50
123	$ 5,000.00,	face value, 5%, New England Gas and Electric Association bonds, due 1950, @ 64⅜	0.00	3,218.75
123		Accrued interest	0.00	33.34
124	$ 5,000.00,	face value, 4½% New York, Chicago & St. Louis R. R. bonds, due 1978, @ 60⅛	0.00	3,006.25
124		Accrued interest	0.00	67.50
125	$ 5,000.00,	face value, 5%, Old Dominion Power Co. bonds, due 1951, @ 82¾	0.00	4,137.50
125		Accrued interest	0.00	23.62
126	$ 30,000.00,	face value, 4½% Portland General Electric Co. bonds, due 1960, @ 77	0.00	23,100.00
126		Accrued interest	0.00	405.00
127	$ 10,000.00,	face value, 4½% "B" Republic Steel Corporation bonds due 1961 @ 104⅛	0.00	10,412.50
127		Accrued interest	0.00	172.50
128	$ 3,800.00,	face value, 6%, Shaffer Oil and Refining Co. notes, due 1933, @ 49½	0.00	1,881.00
129	$ 5,000.00,	face value, 6%, Standard Gas & Electric Co. gold notes, due 1948, @ 69¾	0.00	3,4387.50
129		Accrued interest	0.00	46.00

22

130	$ 6,000.00,	face value, 5%, Telephone Service Co. of Ohio bonds, due 1933, @ 79¼	0.00	4,755.00
130		Accrued interest	0.00	40.00

131—	$ 10,000.00,	face value, 5½%, Twin City Rapid Transit Co. bonds, due 1952, @ 61	0.00	6,100.00
131—		Accrued interest	0.00	27.50
132—	$ 11,700.00,	face value, 6%, Village of Dalton, Illinois Imp. bonds, Ser. I @ 20	0.00	2,340.00
133—	$ 4,750.00,	face value, 6%, Village of Dalton, Ill., Imp. bonds, Ser. H @ 20	0.00	950.00
134—	$ 2,530.46,	face value, 6%, Village of Homewood, Ill., Special Assessment bonds	0.00	1,935.00
135—	$ 30,000.00,	face value, 5%, Western Pacific Railroad Co. bonds, due 1946, @ 14½	0.00	4,350.00
136—		Due from Fullerton Amusement Co.	0.00	8,500.00
137—		First Mortgage note, Barbara Kutten (flat)	0.00	8,000.00
138—		First Mortgage note, Joseph Hopp, et al (flat).	0.00	2,135.00

It is held that decedent made a transfer of the property represented by the above items 1 to 138, inclusive, to take effect in possession or enjoyment at or after his death, and the said items are, therefore, included in decedent's gross estate pursuant to Section 811(c) of the Internal Revenue Code.

The determined value of each of the above items represents the fair market value thereof as of the applicable valuation date and is based upon reliable information procured by this office during the course of investigation. Accrued interest to date of death and dividends payable subsequent to decedent's death to holders of record of a date prior to decedent's death have been included as to certain items.

Debts of decedent	Returned	Determined
Item 12	$2,276.98	2,243.85

The claimed deduction is allowed in the amount paid by the estate.

22 *Exhibit A.*

23 Computation of Tax.

	Returned	Determined	
Gross Estate for basic tax	$983,342.20	2,133,498.28	
Deductions	141,299.39	141,266.26	
Net estate for basic tax	841,042.81	1,992,232.02	
Net estate for additional tax	901,042.81	2,052,232.02	
1. Gross basic tax		132,800.88	
2. Credit for gift tax		0.00	
3. Gross basic tax, less gift tax credit		132,800.88	
4. Credit for estate and inheritance tax		0.00	
5. Basic tax net			132,800.88
6. Total gross taxes (basic and additional)		577,448.17	
7. Gross basic tax		132,800.88	
8. Gross additional tax		444,647.29	
9. Credit for gift tax		0.00	
10. Net additional tax			444,647.29
11. Total net basic and additional taxes			577,448.17
12. Defense tax			57,744.82
13. Total tax payable			635,192.99
Total tax shown on return			180,404.41
Deficiency			$454,788.58

Upon receipt of a waiver, or upon the expiration of 90 days from the date of this letter, if a petition is not filed with The Tax Court of the United States, $393,175.97 of the deficiency will be assessed.

As the balance of the deficiency may be eliminated by

credit for State, estate, inheritance, legacy or succession taxes, opportunity will be accorded for the submission of the evidence required by Section 81.9, of Regulations 105. If, after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise, when the credit evidence may be expected.

The deficiency bears interest at the rate of 6 per cent per annum from 15 months after the decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

26 THE TAX COURT OF THE UNITED STATES

(Caption—1662)

ANSWER.

(Filed July 3, 1943.)

Comes now the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed in the above-entitled cause, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Denies the allegations of paragraph 3 of the petition, except it is admitted that the taxes in question are estate taxes.

4. (a), (b), (c), and (d). Denies that the determination of the tax set forth in the notice of deficiency is based upon the errors alleged in subparagraphs (a), (b), (c), and (d) of paragraph 4 of the petition or upon any errors.

27 5 (a.) Admits that on January 2, 1920, the decedent, Sidney M. Spiegel, executed an Indenture of Trust naming Modie J. Spiegel and Sidney M. Spiegel as trustees; that a copy of said trust indenture is attached to the petition as Exhibit B; that the Commissioner has determined that the transfers to the said trust were intended to take effect in possession and enjoyment at or after the grantor's death, and also that the executors filed

their Federal estate tax return with the Collector of Internal Revenue for the First District of Illinois, and that said Federal estate tax return disclosed a tax liability of $180,404.41. Denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.

5 (b), (c), and (d). Denies the allegations of subparagraphs (b), (c), and (d) of paragraph 5 of the petition.

Denies, generally and specifically, each and every allegation contained in the petition not heretofore admitted, qualified, or denied.

Wherefore, it is prayed that the Court redetermine the deficiency herein to be the amount determined by the Commissioner, viz.: $454,788.58.

(Signed) J. P. Wenchel.
J.D.K.
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:
F. R. Shearer,
Division Counsel.
Harold H. Hart,
Special Attorney, Bureau of Internal Revenue.

28 THE TAX COURT OF THE UNITED STATES

(Caption—1662)

MOTION TO AMEND PETITION

(Filed at Hearing, September 24, 1944.)

Now come petitioners, by their attorney, and move to amend the petition filed in this cause by substituting the sum of $20,000.00 in lieu of the sum of $10,000.00 in paragraphs 4(d) and 5(d) of the said petition, respectively, and in support of said motion state that the above amendment is made to conform the petition to the stipulated proof in the above cause.

Respectfully submitted,
Harry Thom,
Attorney for Petitioners.

29 THE TAX COURT OF THE UNITED STATES

(Caption—1662)

STIPULATION OF FACTS.

(Filed at Hearing, September 26, 1944.)

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel of record, that the following facts may be considered as true, and the exhibits hereinafter mentioned may be considered as admitted in evidence, without further proof, subject to the right of either party to object on the grounds of materiality and relevancy and to the right of either party to introduce further evidence not inconsistent herewith:

1. Sidney M. Spiegel, a resident of Winnetka, Illinois, who was born on August 16, 1872, died testate on December 19, 1940, his two daughters, Katherine J. Spiegel
30 and Julia S. Michels, his son, Sidney M. Spiegel, Jr., and his three grandchildren (children of Julia S. Michels), Robert Michels, Jr., Helen Katherine Michels and Sydney Ann Michels survive him. Said persons were living at Sidney M. Spiegel's death and the dates of their birth are as follows:

Katherine J. Spiegel, March 1, 1897.
Sidney M. Spiegel, Jr., August 8, 1904.
Julia S. Michels, March 7, 1907.
Robert Michels, Jr., August 21, 1930.
Helen Katherine Michels, November 17, 1936.
Sydney Ann Michels, November 14, 1938.

2. During his lifetime and on January 2, 1920, Sidney M. Spiegel executed an indenture with Modie J. Spiegel and Sidney M. Spiegel, as trustees, a copy of which indenture is attached hereto and marked "Exhibit 1" and by express reference thereto made a part hereof. The property embraced in said trust was delivered to, and the trust was accepted by, said trustees on said date. From the inception of the trust in 1920 to the date of death of the decedent, the income of the trust was distributed to or for the benefit of the decedent's three children.

3. The petitioners, Sidney M. Spiegel, Jr., Kather-
31 ine J. Spiegel and Robert Michels, who are residents of the State of Illinois, as executors of the Estate of Sidney M. Spiegel, deceased, filed a Federal estate tax return on March 19, 1942 with the Collector of Internal

Revenue at Chicago, Illinois, showing a net taxable estate of $841,042.81 for the basic tax and a net taxable estate of $901,042.81 for the additional tax, the executors having elected to value the property as of one year from the date of death under subdivision (j) of Section 811 of the Internal Revenue Code. The tax shown on said return to be due of $180,404.41 was paid to said Collector on March 19, 1942. A copy of said estate tax return is attached hereto and marked "Exhibit 2" and by express reference thereto made a part hereof.

4. The petitioners did not include in the said estate tax return, as subject to Federal estate tax, the corpus or any part of the corpus owned and held by the trustees under the said indenture dated January 2, 1920.

5. The Commissioner of Internal Revenue in his notice of deficiency, a true copy of which is attached to
32 the petition herein marked "Exhibit A" and which is incorporated herein by reference, was mailed to the petitioners on February 16, 1943. In said notice of deficiency, the Commissioner included on pages 2 to 9, both inclusive, under "Transfers" the sum of $1,140,606.30 representing the fair market value of the entire trust corpus and accumulated income owned and held by the trustees of the trust on December 19, 1940, and increased the gross estate of the decedent subject to estate tax by said amount.

6. Following the death of the decedent the entire corpus and the accumulated income was distributed equally to the three children of Sidney M. Spiegel.

It is agreed between the parties that for the purposes of subdivision (j) of Section 811 of the Internal Revenue Code, the distribution of the property of said trust to the three beneficiaries, Sidney M. Spiegel, Jr., Katherine J. Spiegel and Julia S. Michels, was made as of the date of death of the decedent.

7. The transfers of the property to the trust on January 2, 1920 were not made in contemplation of death.
33 8. It is agreed that the petitioners are entitled to a deduction from the gross estate of $20,000.00 for executors' fees allowed by the Probate Court of Cook County and which have been paid.

Harry Thom,
Attorney for Petitioner.

(Signed) J. P. Wenchel,
J.D.K.
Attorney for Respondent.

36 Official Report of Proceedings

Before

THE TAX COURT OF THE UNITED STATES

(Caption—1662)

(Filed October, 25, 1944)

Place: Chicago, Ill.
Date: September 26, 1944.

Pages 1 to 16.

38 BEFORE THE TAX COURT OF THE UNITED STATES

(Caption—1662)

1212 Lake Shore Drive
Chicago, Illinois,
Tuesday, September 26, 1944,
4:35 p. m.

(Met pursuant to notice.)

Before: Honorable J. M. Sternhagen, Judge.

Appearances:

Harry Thom, 231 South LaSalle Street, Chicago, Illinois, appearing on behalf of Estate of Sidney M. Spiegel, Petitioners.

Harold H. Hart, (Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent.

39 PROCEEDINGS

The Court: Docket No. 1662, Estate of Sidney M. Spiegel. Who appears for petitioner?
Mr. Thom: Harry Thom.
The Court: And for respondent?
Mr. Hart: Harold H. Hart.
The Court: Proceed.

OPENING STATEMENT ON BEHALF OF THE PETITIONER

By Mr. Thom

Mr. Thom: If the Court please, this is an estate tax case involving an estate tax deficiency arising principally from the inclusion in the gross estate of the decedent by the Commissioner of a trust which was created by the decedent in his lifetime.

The issue involved, briefly, is the so-called right of reverter by operation of law. In other words, there is no express right of reverter in this trust. It is a very simple, two-page trust agreement.

Sidney M. Spiegel, the decedent, created this trust—

The Court: Is that the same as a case that has recently been decided?

Mr. Thom: It is the same issue, yes, sir, definitely.

The Court: What is the case? The most recent?

Mr. Thom: The most recent is the Biddle case. I have some more here which I can refer you to.

The Court: Cass, is that one? Well, that is all right. The Biddle case was this summer?

Mr. Thom: That is correct. There are some subsequent cases.

The Court: That is all I want to know.

Mr. Thom: Sidney M. Spiegel created this trust on January 2, 1920. It is a trust for the benefit of his three children. They were to receive the income of this trust until his death, and upon his death the corpus was to be divided between them equally. If at that time one of his children did not survive him that deceased child's share was to go to his children. If that deceased child died without any children surviving, then, it was to go to his other children, or if they were not surviving, to their descendants.

Mr. Spiegel died in 1948, and immediately after the date of his death the trust was distributed to his three children who were living at that time. In addition to the three children who were living at that time, one of his daughters had three children, who were Sidney M. Spiegel's grandchildren.

The Court: This daughter was a deceased child or was living? There were no living children of deceased children?

Mr. Thom: That is correct.

The Court: All of his children survived him?

41 Mr. Thom: All of his children survived him, and one of the surviving daughters had three children.

The Court: I see.

Mr. Thom: The executors did not include this trust in the gross estate. The respondent, the Commissioner, did include it in the notice of deficiency.

In addition, there are three other issues; namely, additional attorney's fees, additional administrative expenses and executors' fees.

The first two issues I mentioned, the additional attorney's fees and the additional administrative expenses, are being waived.

It is stipulated, however, the executors are entitled to a deduction from the gross estate of executors' commissions of $20,000.

Practically all of the facts in the case have been stipulated and I now offer the said stipulation of facts.

The Court: That is received.

Mr. Hart: Your Honor—

Mr. Thom: I am not through with the offer yet.

Mr. Hart: Go ahead. Make your offer.

Mr. Thom: I also offer the estate tax return, the original, which is called Exhibit 2 in the stipulation. I understand Mr. Hart will withdraw that and submit a photostatic copy.

42 Mr. Hart: May I have that privilege?

The Court: You may.

Mr. Thom: Do you want to add anything by way of an opening statement?

Opening Statement on Behalf of the Respondent.

By Mr. Hart.

Mr. Hart: Your Honor, as I conceive the question it is whether the value of the corpus of this estate as of the date of death—the corpus of the trust estate—should be included within the provisions of 811 (c) of the Revenue Code, and specifically those provisions which are worded, intended to take effect or possession or enjoinment at or after his death.

In this case the attorney for petitioner stated what hap-

pened to the income during the life of the petitioner. There was a life estate which ended with his life; the children getting the income. Then at his death the corpus was to go in the following fashion:

"Upon my death, the said trustees, * * * shall divide said trust fund, and any accumulated income thereon then in the hands of said trustees, equally among my said three (3) children, and if any of my said children shall have died, leaving any child or children surviving, then the child or children of said deceased child of mine shall receive the share of said trust fund to which its or their
43 parent would have been entitled, and if any of my said three (3) children shall have died without leaving any child or children him or her surviving, then the share to which such deceased child of mine would have been entitled shall go to my remaining children, and the descendants of any deceased child of mine per stirpes and not per capita."

The Court: That last provision you rely upon to bring it within the gross estate, I suppose?

Mr. Hart: We contend this transfer was intended to take effect or possession at or after death. No beneficiary named here would receive anything unless that beneficiary survived the death of the settlor, and if the beneficiary died prior to the settlor, then, he had not given the corpus away, and only gave the corpus away conditionally. So we say within the literal wording of 811 (c), this should be included in the gross estate and taxed.

The Court: I suppose this is like the Biddle case?

Mr. Hart: This is like the Biddle case?

The Court: Yes, the Biddle case.

Mr. Hart: No; these cases are all different.

The Court: They are all different in fact. Are they any different in principle?

Mr. Hart: I have read very many cases on this. I haven't run up—I can find one exactly like this. This
44 recent Stinson case is something like it. There was express provision in there, though, if certain beneficiaries died prior to the settlor, he had power of assignment. That is the Third Circuit Court decision.

The Court: The Lloyd case in the Third Circuit is also something like that, isn't it? They have the Stinson case on one side and the Lloyd case on the other. They are both something like that.

Mr. Hart: In my mind, I can't reconcile the cases.

The Court: Can you reconcile those two cases, the Lloyd case and the Stinson case—

Mr. Hart: I have notes on this Lloyd case.

The Court (continuing): —by the same court within a few months of each other? Don't take time.

Mr. Hart: I haven't the facts in the Lloyd case.

The Court: The transcript will show I have asked that question. You can reply when you file your brief.

Mr. Hart: I notice one thing, the Lloyd case is mentioned—no, that is mentioned—yes, the Lloyd case is mentioned by the Court in the Stinson case.

Mr. Thom: I would like to call the Court's attention to the Flora Lasker case in this circuit, which the Commissioner has had published in his Internal Revenue Bulletin. As I understand that procedure, that is tantamount to acquiescence. I can't understand his position in pre-
45 senting this case.

The Court: It would be beyond me to attempt to enlighten you on that.

Mr. Thom: I would also like to stipulate some actuarial figures in connection with this case.

Mr. Hart: Your Honor, I am going to object to the introduction of these actuarial factors. As I understand the factors they measure the probability of one factor of the settlor, a man at this age, just prior to his death, outliving six other people. We are trying to put the whole of the corpus of the trust into the estate. The only value of these factors would show the possibility of a man of sixty-eight outliving all these beneficiaries would be remote. The Court knows that by just having the problem given to him. There is no need for actuarial help. Is the Court going to decide these questions, if remoteness is the question, on a mathematical formula and tell us it is .005 on one side of the fence, if it is some other fraction on the other side of the fence? I don't think the Court needs this sort of testimony in a case of this kind.

The Court: In the first place, I can only speak for this Court, and certainly cannot speak for any court of appeal as to whether or not that actuarial data is a means of determining the remoteness or proximity of the survival. If you are asking me, that is the answer.

46 Mr. Thom: Subject to that objection—in other words, he is not objecting?

The Court: I didn't hear any objection. It may be I heard some—

Mr. Hart: I am objecting to the introduction of these actuarial factors as irrelevant and immaterial.

The Court: I will not exclude them. I will overrule the objection.

Mr. Hart: May I have an exception, please?

The Court: Yes.

Mr. Thom: Subject to that objection, it is stipulated as follows: The value computed on the basis of the mortality table and on the basis of the assumed interest rate prescribed in the Treasury Regulations applicable to Federal estate taxes of the right of a person aged sixty-eight years, to receive $1.00 on the date of death of the one last to die of six other persons, aged respectively, 44, 36, 34, 10, 4, 2 years, provided said person aged 68 years would survive all of the six other persons, is .00007384.

The Court: Is that stipulated, Mr. Hart?

Mr. Hart: Yes?

The Court: Subject to your—

Mr. Hart: Our actuaries agree on this figure.

The Court: I don't care if it is stipulated.

47 Mr. Hart: We do agree on those figures.

Mr. Thom: There is another stipulation involving an actuarial factor. I suppose you have the same objection?

Mr. Hart: The same objection. The same ruling?

The Court: Yes.

Mr. Thom: It is further stipulated that the probability computed on the basis of the mortality table prescribed by Treasury Regulations applicable to Federal estate taxes, that a person aged 68 years will survive six other persons of the ages of 44 years, 36 years, 34 years, 10 years, 4 years, 2 years, respectively, is .00015635.

The Court: Is that stipulated, Mr. Hart?

Mr. Hart: I agree.

The Court: Subject to your objection?

Mr. Hart: Yes, your Honor.

Mr. Thom: Now, if the Court please, I have one witness, Mr. Carl Meyer.

Whereupon, CARL MEYER, called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thom.

Q. Will you state your name, please?

48 A. Carl Meyer.

Q. You are a partner in the law firm of Meyer, Mayer, Austrian and Platt?

A. I am.

Q. Were you one of the partners in the same firm in 1919 and 1920?

A. I was.

Q. Was Sidney M. Spiegel, petitioner in this case, a client of yours in 1919 and 1920?

A. When you say petitioner in this case,—he is dead. He is not petitioner.

Mr. Thom: He is petitioner in this case, Sidney M. Spiegel.

The Court: No, he is dead.

By Mr. Thom:

Q. Was Sidney M. Spiegel a client of yours in 1919 and 1920?

A. Yes.

Q. In the latter part of 1919, did he consult you in reference to the creation of a trust for the benefit of his three children?

A. He did.

Q. I show you Exhibit 1 attached to the stipulation of facts filed in this case and ask you whether you drafted that instrument?

49 A. I drafted the instrument of which that is a copy.

Q. That was drafted on or before January 2, 1920, the date it bears?

A. It was.

Q. Will you state whether or not you had any instructions from Mr. Sidney M. Spiegel with reference particularly to the divesting himself from complete ownership of the property transferred under that trust or under that agreement?

A. Mr. Spiegel, the creator—

Mr. Hart: Just a moment. Will you answer yes or no?
The Witness: I didn't hear you.
The Court: Do you remember the question?
The Witness: Yes, I think I remember it.
The Court: Could you answer it yes or no?
The Witness: I will answer it, "Yes". He asked whether I had any instructions.

By Mr. Thom:

Q. What were those instructions?
Mr. Hart: I am going to object, if the Court please. The instrument speaks for itself, and this evidence would be evidence in the nature of oral evidence, and it would tend to vary the terms of this instrument. The lawyer who drew the instrument is presumed to have drawn it in accordance with the instructions of his client.
50 The Court: I will overrule the objection.
Mr. Hart: May I have an exception?
The Court: You always have an exception to any adverse ruling.
Mr. Hart: Thank you.
The Witness: Mr. Spiegel, the settlor or creator of the trust, on several occasions prior to my drawing this instrument stated to me that he desired and intended that this property should be transferred to the trustees for the benefit of his children, and that he wanted at no time to have any interest or title to the property, and I endeavored as best I could to carry out those instructions. I might add that I believe I did.

By Mr. Thom:

Q. Did Mr. Spiegel intend to retain any reversionary or other interest in the property transferred to the trust?
Mr. Hart: I object to that.
The Court: I will sustain the objection.
Mr. Thom: That is all.
The Court: Any cross-examination?
Mr. Hart: Yes, your Honor.

Cross-Examination by Mr. Hart.

Q. In your opinion the language you used was the language which your client intended you to put in that
51 instrument to express his desire?
A. I did not so testify.

The Court: He is asking you whether that is your opinion.

The Witness: How is that?

The Court: He is asking you whether that is your opinion now. Can you answer whether it is or not?

The Witness: Will the reporter read the question?

(The question was read by the reporter.)

The Witness: It was not. That question, if I understand it correctly, puts in the mouth of the client the express language that I as a lawyer put into the instrument to carry out the intent that he wanted to have in the instrument. I had no discussion with him as to what language I should put in the instrument.

By Mr. Hart:

Q. But after discussing the matter with him and hearing of his intention you were of the opinion and are still of the opinion the language used carried out that intention—

A. Yes, sir.

Q. (Continuing.) —are you not?

A. Yes, sir.

Mr. Hart: That is all.

The Court: That is all.

The Witness: I may disagree with some of the 52 decisions.

(Witness excused.)

The Court: Anything more, Mr. Thom?

Mr. Thom: That is all.

The Court: Has the respondent any evidence?

Mr. Hart: Yes, your Honor. Respondent is now going to submit an actuarial computation.

Mr. Thom: I am objecting to the materiality and relevancy of this actuarial factor which Mr. Hart is now stipulating to. I don't disagree with the factor itself.

The Court: Mr. Hart, what you are doing is offering to stipulate?

Mr. Hart: I am offering to stipulate this fact.

The Court: All right. Mr. Thom objects to it, but he is going to stipulate to the facts over his objection.

Mr. Hart: The first factor reads: The probability computed on the basis of the mortality table prescribed in Treasury Regulation applicable to Federal estate taxes, that a person aged 47 years will survive three (3) other

persons of the age of 13 years, 15 years, 23 years, is .01612.

The Court: I will overrule the objection.

Mr. Hart: The second factor is the value computed on the basis of the mortality table and on the basis of the assumed interest rate prescribed in the Treasury Regulation applicable to Federal estate taxes of the right of a
53 person aged 47 years, to receive $1.00 on the date of the death of the one last to die of three other persons aged respectively 13 years, 15 years, 23 years is .00390.

The Court: Mr. Hart, give that to the reporter.

That stipulation, Mr. Thom, is subject to your objection, is that correct?

Mr. Thom: Yes.

The Court: Objection overruled.

Mr. Hart: That ends my case.

The Court: Very well. You may file your briefs under the rules.

(Whereupon, at 5:00 o'clock p. m., Tuesday, September 26, 1944, the hearing in the above-entitled matter was completed.)

54 EXHIBIT 2

Original

Form 706 — Treasury Department — Internal Revenue Service (Revised October 1941)

Estate Tax Return

(To be executed and filed in duplicate)

Decedent's name Sidney M. Spiegel.

Date of death December 19, 1940.

Residence at time of death 440 Sheridan Road, Winnetka, Illinois.

Citizenship at time of death United States of America.

General Instructions

Statute and General Description

Federal estate taxation under the Internal Revenue Code (chapter 3), applicable to estates of decedents dying on or after February 11, 1939, consists of, first, the basic estate

tax (subchapter A), second, the additional estate tax (subchapter B), and, third, the defense tax (subchapter C, as added by the Revenue Act of 1940, and repealed by the Revenue Act of 1941—restricted to estates of decedents dying between June 25, 1940, and September 21, 1941). Prior estate tax statutes are applicable to the estates of decedents who died before February 11, 1939.

In the case of a citizen or resident of the United States, a specific exemption of $40,000 is authorized for the purpose of the basic estate tax and one of $40,000 is authorized for the purpose of the additional tax. No specific exemption is authorized if the decedent was a nonresident alien of the United States.

A credit is authorized against the basic estate tax (not in excess of 80 percent thereof) for estate, inheritance, legacy, or succession taxes paid a State, Territory, or the District of Columbia (or, if the decedent died after June 29, 1939, a possession of the United States). No credit is allowable against the additional estate tax for estate, inheritance, legacy, or succession taxes paid a State, Territory, the District of Columbia, or any possession of the United States.

Credits for Federal gift taxes are, under certain conditions and limitations, allowable against both the basic and the additional estate taxes.

The Federal estate tax is neither a property nor an inheritance tax. It is imposed upon the transfer of the entire net estate and not upon any particular legacy, devise, or distributive share. The relationship of the beneficiary to the decedent has no bearing on the question of liability or the extent thereof. The transfer of property is taxable although it escheats to the State for lack of heirs.

Return Required for Estate of Resident or Citizen

A return on this form must be filed for the estate of every resident or citizen of the United States whose gross estate as defined by the statute exceeded $40,000 in value at the date of death.

The value of the gross estate at the date of the decedent's death governs the liability for the filing of the return regardless of any valuation as of a subsequent time that may be adopted by the executor under the provisions of section 811 (j) of the Internal Revenue Code.

Return Required for Estate of Nonresident Alien

A return on this form is required for the estate of every nonresident alien decedent if any part of the gross estate was situated, within the meaning of the statute, in the United States. No specific exemption is authorized in the case of a nonresident alien.

Time and Place for Filing Return

The return is due 15 months after the date of the decedent's death. The return for the estate of a resident decedent must be filed with the collector in whose district the decedent had his domicile at the time of death. The return for the estate of a nonresident decedent must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if in the case of a nonresident citizen no part of the gross estate was situated in the United States, it must be filed with the Collector for the Second District of New York, or with such collector as the Commissioner may designate.

Payment of Tax

The tax is due 15 months after the date of the decedent's death, and must be paid within such period unless an extension of time for payment thereof has been granted by the Commissioner. Check or money order in payment of the tax should be made payable to "Collector of Internal Revenue at ....," naming city and State in which is located the office of the collector with whom the return is filed.

Gross Estate

In addition to property passing under a will or the intestate laws, the gross estate for the purpose of the estate tax includes, as more specifically explained hereinafter, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which

the decedent exercised a general power of appointment, and dower, curtesy, or statutory estate in lieu thereof, of the surviving spouse.

Property Situated in the United States

In the case of the estate of a nonresident alien the statute reaches only property situated in the United States at the time of death, except that property transferred during the decedent's life and described under Schedule G is included if such property was situated in the United States either at the time of the transfer or at the time of death. The term "United States," when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. Real estate and tangible personal property are situated in the United States if physically therein. Written evidences of intangible property which are treated as being the property itself, such as certificates of stocks or bonds, constitute property situated in the United States if physically situated therein. Stock of a domestic corporation, however, constitutes property within the United States, irrespective of where the certificates thereof are physically located. Intangible personal property the written evidence of which is not treated as being the property itself, such as a simple debt or open account, constitutes property within the United States if consisting of a property right issuing from or enforcible against a resident of the United States or a domestic corporation (public or private). However, under an express provision of the statute (section 863 of the Internal Revenue Code), proceeds of insurance upon the life of a nonresident alien, and bank deposits of a nonresident alien who was not engaged in business in the United States at the time of his death, are not regarded as property situated in the United States.

Supplemental Documents

If the decedent was a resident and died testate, two copies of the will, one of them certified, must be filed.

If the decedent was a nonresident citizen, the following documents must be filed with the return:

(1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of

administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court.

(2) A copy of the return filed under the foreign inheritance, estate, legacy, succession tax, or other death duty act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

(3) If the decedent died testate, a certified copy of the will.

If the decedent was a nonresident alien, the following documents must be filed:

(1) If deductions are claimed, certified copies of the inventory and schedule or a certified copy of the return, as described in the preceding subparagraphs (1) and (2).

(2) If the decedent died testate, a certified copy of the will.

Other supplemental documents may be required as hereinafter explained under the instructions for the several schedules.

Execution of Return

This form consists of the cover sheets and 19 inside sheets numbered in consecutive order. A complete set should be used for every copy of the return required. For convenience in typing carbon copies the sets as issued may be readily separated and the corresponding sheets matched. When completed, each copy of the return to be filed must be permanently fastened together with all sheets in proper order. Any suitable type of paper fastener may be utilized for this purpose. Ordinary wire staples are recommended for the return of average size. The return must be filed in duplicate. All sheets provided, numbered I to XXI, must be included.

Write only on one side of each sheet of paper. If there is not sufficient space for all entries under any of the printed schedules, use additional sheets of the same size, and insert in the proper order in the return. All information required, as indicated under "General Information," must be supplied in the spaces provided. The questions asked under each schedule must be specifically answered, and if the decedent owned no property of any class specified for the schedule, the word "None" should be written across the schedule.

The gross estate must be set forth under the appropriate Schedules A to I. The deductions, except amounts claimed

for the specific exemptions and property previously taxed, should be shown under the appropriate Schedules J to N. The amounts deducted for the specific exemptions and property previously taxed should be shown under Schedules P and Q, or under Schedule R. If the gross estate of a resident or citizen exceeds $400,000 the net estate for the basic tax should be computed under Schedule P. The net estate for the additional tax on the estate of a resident or citizen should be computed under Schedule Q. The net estate for a nonresident alien should be computed under Schedule R.

For every item of principal, any interest or rent accrued thereon at the date of the decedent's death and any outstanding dividends declared to stockholders of record on or before such date must be separately entered under the column headed "Value at date of death"; and, if the optional valuation is adopted, any includible income with respect to each item of principal, as hereinafter explained, must be separately entered under the column headed "Value under option."

The items should be numbered under every schedule and a separate enumeration should be used for each schedule. The total for each schedule should be shown at the bottom of the schedule. The totals should not be carried forward from one schedule to another, but the total or totals for each schedule should be entered under the Recapitulation, Schedule O.

The information indicated by the columns headed "Subsequent valuation date" and "Value under option" should not be shown unless the executor adopts the optional valuation authorized by section 811 (j) of the Internal Revenue Code. If such optional valuation is not adopted the space in the columns headed "Subsequent valuation date" and "Value under option" may be utilized for descriptive matter, as indicated in the examples shown under the instructions for Schedules A and B. Similar information should be omitted in the space provided therefor under the Recapitulation, Schedule O, if the optional valuation is not adopted.

The computation of the tax must be shown in detail as indicated on sheet XX. If the executor determines no liability for tax, the word "None" should be shown at item 11 under "Computation of Tax."

The filing of this form will not be considered the filing of a complete return as required by the statute and the

regulations issued pursuant thereto unless all the information as indicated herein is set forth.

If there is more than one executor or administrator, all must sign and swear to (or affirm) the return. The affidavit may be sworn to before any person authorized to administer oaths except the attorney or attorneys representing the taxpayer. If the officer has an official seal, such seal must be affixed.

If there is no executor or administrator appointed, qualified, and acting in the United States, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (section 930 (a) of the Internal Revenue Code), and is liable for the filing of the return. If two or more persons are liable for the filing of the return, it is preferable for all to join in the filing of one complete return, but if they are unable to join in making one complete return, each is required to file a return disclosing all the information he has in the case, including the name of every person holding an interest in the property and a full description of such property. If the appointed, qualified, and acting executor or administrator is unable to make a complete return, the statute requires that every person holding an interest in the property shall, upon notice from the collector, make a return as to such interest.

The person or persons who file the return must, in every case, execute the first affidavit on sheet XX of both the original and duplicate copies. If the return is prepared by an attorney or agent for the person or persons filing this return, the second affidavit on sheet XX of both copies must also be executed, and executed only by such attorney or agent.

If the taxpayer desires to be represented by an attorney, by correspondence or otherwise, a power of attorney must be filed. For this purpose, Form 711, obtainable from any collector, may be executed.

Valuation

Unless the executor elects otherwise at the time the return is filed, all property included in the gross estate must be valued as of the date of the decedent's death.

Optional Valuation

If the executor elects to adopt the valuation authorized by section 811 (j) of the Internal Revenue Code, such election must be expressly indicated in the space provided under "General Information." The election cannot be exercised unless the return is filed within fifteen months after the decedent's death or within the period for filing the return as extended by the Commissioner or the collector under the authority of the law and regulations prescribed for such extensions.

In general, the object of section 811 (j) of the Internal Revenue Code is to make provision whereby the amount of tax otherwise payable may be lessened when, within the year following the decedent's death, the gross estate has suffered a shrinkage in its aggregate value.

The executor may, by an election duly made upon this return, have the property which was included in the gross estate on the date of the decedent's death valued as of the applicable dates, as follows:

(1) Any property distributed, sold, exchanged, or otherwise disposed of within 1 year after the decedent's death, valued as of the date of such distribution, sale, exchange, or other disposition, whichever first occurs;

(2) Any property not distributed, sold, exchanged, or otherwise disposed of within such 1-year period, valued as of the date 1 year after the date of the decedent's death;

(3) Any property, interest, or estate which is "affected by mere laspe of time," valued as of the date of decedent's death; except that an adjustment is to be made for any difference in its value, not due to such lapse of time, as of the date 1 year after the date of decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever first occurs.

Property "distributed" is limited to distributors thereof by the executor, or by the trustee in the case of property included in the gross estate under subsections (c), (d), or (f) of section 811 of the Internal Revenue Code. (Subsections (c) and (d) pertain to certain transfers during the decedent's life and subsection (f) pertains to property passing under a general power of appointment.) Distribution may be effected by the entry of the order or decree of distribution, or, if there is no such order or decree, by

the segregation or separation of the property from the estate or the trust, or by the actual paying over or delivery of the property to the person entitled thereto by the will, or under the law, or by the terms of the trust.

The sale, exchange, or other disposition, to which the subdivision refers, may be one made by the executor, or by the trustee of property included in the gross estate under subsections (c), (d), or (f) of section 811, or by any other person to whom the property had not been distributed by the executor or by such a trustee, or to whom it had not passed from the gross estate as the result of a sale, exchange, or other disposition thereof, as, for example, a sale, exchange, or other disposition by an heir, devisee, donee, or grantee to whom the decedent in his lifetime transferred the property, or by the survivor of the decedent if the property had been held by them subject to the right of survivorship.

Property, in the case of a sale, exchange, or other disposition thereof within the 1-year period, is to be valued as of the date when it ceases to form a part of the gross estate, that is, the date when the title passes as the result of its sale, exchange, or other disposition. The terms, 56 "distributed," "sold," "exchanged," "or otherwise disposed of," comprehend all possible ways by which property may be separated or passed from the gross estate.

The property to be valued as of 1 year after the date of decedent's death, or as of that date, or as of some intermediate date, is the property included in the gross estate on the date of the decedent's death. It will be necessary in every case first to determine what property constituted the gross estate at decedent's death.

Interest accrued to the date of the decedent's death on bonds, notes, and other interest-bearing obligations constitutes property of the gross estate on the date of his death, and is to be included in the optional valuation. Interest accruing between the date of the decedent's death and the subsequent valuation date of the bond, note, or other obligation to which such interest pertains does not constitute property of the gross estate at the date of the decedent's death and is to be excluded from the optional valuation. However, any part payment of principal made after the date of the decedent's death and on or before the subsequent valuation date, or any advance payment of interest

for a period after the subsequent valuation date of the principal which has the effect of reducing the value of the principal obligation as of the subsequent valuation date constitutes a part of the gross estate and is to be included in the optional valuation.

Rent accrued to the date of the decedent's death on leased realty or personalty constitutes property of the gross estate on the date of his death and is to be included in the optional valuation. Rent accruing between the date of the decedent's death and the subsequent valuation date of the leased property does not constitute property of the gross estate at the date of the decedent's death and is to be excluded from the optional valuation. The principal stated above with respect to interest paid in advance also applies to advance payments of rent.

Outstanding dividends which were declared to stockholders of record on or before the date of the decedent's death constitute property of the gross estate on the date of his death and are to be included in the optional valuation. Ordinary dividends declared to stockholders of record after the date of the decedent's death do not constitute property of the gross estate at the date of his death and are to be excluded from the optional valuation. However, if dividends are declared to stockholders of record after the date of the decedent's death with the effect that the shares of stock at the subsequent valuation date do not reasonably represent the same property existing at the date of the decedent's death, such dividends are to be included in the optional valuation, except to the extent that such dividends are paid from earnings of the corporation after the date of the decedent's death.

Properties, interests, or estates which are affected by mere lapse of time include patents, estates for the life of another other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase, "affected by mere lapse of time," has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected.

The date of valuation of any property, interest, or estate so affected is, as prescribed in subsection (j), the date of decedent's death, but with an adjustment to be made of

the value then obtaining, which adjustment, while disregarding any later increase or decrease in value due solely to lapse of time, adds to or subtracts from the value at death any difference between that value and the value as of the date 1 year after decedent's death, or the applicable intermediate date, if, and to the extent that, such difference was due to a cause or causes other than lapse of time. Accordingly, in the valuation of any property, interest, or estate affected by lapse of time, the difference between its value at decedent's death and its value as of the later date must be analyzed to determine the portion of such difference attributable to other cause or causes, and that portion only is to be applied in adjusting the value as of the date of the decedent's death. For further information and examples relative to the valuation of properties, interests, or estates which are affected by mere lapse of time, see the Estate Tax Regulations.

Deductions authorized under section 812 or section 861 of the Internal Revenue Code are limited to the extent that allowance thereof is not, in effect, given in the valuing of the gross estate. Property passing by decedent's will, or passing by a transfer made by the decedent in his lifetime (if the transfer was such as to require the property transferred to be included in the gross estate) to or for any such public, charitable, or religious uses as are described in section 812 (d) or 861 (a) (3) of the Internal Revenue Code, is deductible at its value as of the date of the decedent's death, subject, however, to adjustment for any difference in value 1 year after such death, or at the date of its sale or exchange. But no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

The election applies to all the property included in the gross estate on the date of the decedent's death. It cannot be applied only to a portion of such property.

In every case where the election is exercised, the return must set forth (1) an itemized description of all property included in the gross estate on the date of the decedent's death together with the value of each item as of that date, (2) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of such property during the 1-year period after the decedent's death, together with the dates thereof, and (3) the value of each item of property determined as hereinbefore explained and in accordance with the regulations issued pursuant to subsection (j).

The foregoing information must be shown under the appropriate columns of each schedule. Under the column headed "Description" a brief statement for each item must be shown explaining the status or disposition governing the subsequent valuation date, such as, "Not disposed of within year following death," "Distributed," "Sold," "Bond paid on maturity," etc. Under this same heading a description of each item of principal and includible income must be entered separately. Under the heading "subsequent valuation date," the applicable date for each separate entry of principal and includible income must be shown. Under the heading "Value under option" the amount of the principal and the amount of includible income must be separately shown. In the case of any interest or estate, the value of which is affected by mere lapse of time such as patents, leaseholds, estates pur autre vie, or remainder interests, the value shown under the heading "Value under option" must be the adjusted value, i. e., the value as of the date of death with an adjustment reflecting any difference in its value as of the later date not due to mere lapse of time. Under the heading "Value at date of death" the amount of the principal and the amount of includible income must be entered separately.

For examples illustrating the entry of the information required under the schedules, see the reverse of sheets III and V. While the examples there shown pertain to Schedules A and B, the information required under the other schedules should be set forth in a similar manner.

All the information indicated on this form must be supplied. Statements as to distributions, sales, exchanges, and other dispositions of the property within the 1-year period after the decedent's death must be supported by evidence. If the court issues an order of distribution during that period a certified copy of the order must be submitted as part of the evidence. The Commissioner may require the submission of such additional evidence as is deemed necessary.

Penalties

For penalties for failure to file return when due, keep records, and supply information, or for the preparation or presentation or the aiding or assisting in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, see the Estate Tax Regulations.

Further Instructions

Detailed instructions pertaining to each schedule are included herein. For further information see the Estate Tax Regulations, a copy of which may be obtained from the Collector of Internal Revenue for your district.

57 General Information

Decedent's name Sidney M. Spiegel. Date of death December 19, 1940.

Residence (domicile) at date of death 410 Sheridan Road, Winnetka, Illinois.

Year in which last domicile was established many years ago.

Citizenship at date of death United States of America.

Place of death 410 Sheridan Road, Winnetka, Illinois.

Cause of death and length of last illness cancer—approximately 14 months.

Names and addresses of decedent's physicians. Herbert F. Binswanger—104 S. Michigan Ave., Chicago, Illinois.

If decedent was confined in a hospital during his last illness, give name and address of hospital No.

Date of birth August 16, 1872. Place of birth Chicago, Illinois.

Business or occupation retired.

Business address 540 N. Michigan Ave., Chicago, Illinois.

Married, single, separated, widowed, or divorced at date of death widowed.

Number of children three.

Heirs, Next of Kin, Devisees, and Legatees

(If more than five, only the names of the five principle ones are required)

Name	Relationship	Address
Katherine J. Spiegel, daughter	daughter	410 Sheridan Road, Winnetka, Illinois
Sidney M. Spiegel, Jr.	son	540 North Michigan Ave., Chicago, Ill.
Julia Spiegel Michels	daughter	160 Sheridan Road, Winnetka, Illinois

Did decedent die testate? yes.

Were letters testamentary or of administration granted for this estate? yes.

Date granted December 22, 1940.

Name and location of court Probate Court of Cook County, Illinois.

To whom granted? (Explain if different from the person or persons filing return.) Katherine J. Spiegel, Sidney M. Spiegel, Jr., Robert Michels.

Did the decedent at date of death own property in any State or country other than that of his last domicile? no.

Place of ancillary probate proceedings, if any no.

58 Name and address of ancillary administrator or executor none.

Did the decedent at the time of his death have a safe deposit box held either alone or in the joint names of himself and another? Michigan and Jackson Safe Deposit Company, 310 S. Michigan Ave.

Is so, state location Chicago, Ill.

If held jointly, give the name of the joint depositor and his relationship to the decedent held jointly—Katherine J. Spiegel, daughter had access to box.

If the decedent had a safe deposit box at the time of his death indicate under what schedules in this return the contents are listed B and C.

If any of the contents of the safe deposit box are omitted from the schedules, explain why none are omitted.

Did the undersigned person or persons filing return make diligent and careful search for property of every kind left by the decedent? yes.

Did the same undersigned make diligent and careful search for information as to any transfers of the value of $5,000 or more made by the decedent during his lifetime without an adequate and full consideration in money or moneys worth? yes.

Name and address of attorney representing estate, if any Mayer, Meyer, Austrian & Platt, 231 S. LaSalle Street, Chicago, Illinois.

Optional Valuation

Does the executor elect to have the gross estate of this decedent valued in accordance with values as of a date or dates subsequent to the decedent's death as authorized by section 811 (j) of the Internal Revenue Code? (Answer "Yes" or "No.") yes.

(Unless the answer to this question is "Yes," the property included in the gross estate must be valued as of the date of the decedent's death.)

Estate of Sidney M. Spiegel, deceased.

59 Instructions For Schedule A

Real Estate

Real estate should be so described and identified that upon investigation by an Internal Revenue officer it may be readily located for inspection and valuation. For each parcel of real estate there should be given the area, if the parcel is improved, a short statement of the character of the improvements. For city or town property state street and number, ward, subdivision, block and lot, etc. For rural property state township, range, landmarks, etc.

If any item of real estate is subject to a mortgage, the unpaid balance of the mortgage should be shown under "Description." The full value of the property, and not the equity must be extended in the value column. The amount of the mortgage should be deducted under Schedule L of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule L of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemptions should be made in returning the value of the real estate.

The basis for the returned values should be stated. If based upon appraisal a copy of such appraisal should either be attached to the return or retained in your files subject to inspection.

Examples Showing Use of Schedule A

Example where the optional valuation is not adopted: date of death, January 1, 1940

1	House and lot, 1921 William Street Nw., Washington, D. C. (lot 6, square 481). Rent of $900 due at end of each quarter, February 1, May 1, August 1, and November 1. Value based on appraisal, copy of which is attached	$36,000
	Rent due on item 1 for quarter ending November 1, 1939, but not collected at date of death	900
	Rent accrued on item 1 for November and December 1939	600
2	House and lot, 304 Jefferson Street, Alexandria, Va. (lot 18, square 40). Rent of $100 payable monthly. Value based on appraisal, copy of which is attached	12,000
	Rent due on item 2 for December 1939, but not collected at date of death	100

Example where the optional valuation is adopted: date of death, January 1, 1940

Item No.	Description	Subsequent valuation date	Value under option	Value at date death
1	House and lot, 1921 William Street Nw., Washington, D. C. (lot 6, square 481). Rent of $900 due at end of each quarter, February 1, May 1, August 1, and November 1. Value based on appraisal, copy of which is attached. Not disposed of within year following death.	1/1/41	$30,000	$36,000
	Rent due on item 1 for quarter ending November 1, 1939, but not collected until February 1, 1940	2/1/40	900	900
	Rent accrued on item 1 for November and December 1939, collected on February 1, 1940	2/1/40	600	600

Item No.	Description	Subsequent valuation date	Value under option	Value at date death
2	House and lot, 304 Jefferson Street, Alexandria, Va. (lot 18, square 40). Rent of $100 payable monthly. Value based on appraisal, copy of which is attached. Property exchanged for farm on December 1, 1940	12/1/40	10,000	12,000
	Rent due on item 2 for December 1939, but not collected until February 1, 1940	2/1/40	100	100

60 **Gross Estate**

Schedule A

Real Estate

Did decedent, at the time of his death, own any real estate in the United States (Answer "Yes" or "No.") Yes.

Lots Twelve (12), Thirteen (13) and Fourteen (14), (except that part lying East of a line fifty (50) feet West of and parallel with the East line of Section Seven (7), in Block One (1) in E. Calvin's Subdivision of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of the Southeast quarter (SE¼) of Section Seven (7), Township Thirty-eight (38) North, Range Fourteen (14) East of the Third Principal Meridian (3rd P. M.), commonly known as 5428-32 South Ashland Avenue, Chicago.

The property commonly known as No. 5428 South Ashland Avenue is improved with a brick building, containing one store on the ground floor, one four-room apartment on the second floor and a loft at the rear of the apartment. The property known as 5430-32 South Ashland Avenue is improved with a brick building, containing two stores. Title to both properties is unencumbered. $15,000.00

Total (also enter under the Recapitulation, Schedule O) $15,000,000.

(If more space is needed, insert additional sheets of same size)

Estate of Sidney M. Spiegel, deceased Sheet IV

61

Schedule B.

Stocks and Bonds.

(See Instructions on reverse of Sheet IV)

(1) Did the decedent, if a resident or citizen of the United States, own any stocks or bonds, regardless of situs, at the time of his death? (Answer "Yes" or "No.") Yes.

(2) Did the decedent, if a nonresident alien of the United States, own, at the time of his death, any stocks or bonds situated in the United States as explained in the instructions? (Answer "Yes" or "No.") No.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	2,900 shares Capital Stock of Air Reduction Company, Incorporated, a New York corporation, no-par value @ 41			$118,900.00
	1650 shares sold during year as follows:			
	200 shares	8-12-41	$8,358.32	
	150 shares	8-13-41	6,178.11	
	400 shares	8-14-41	16,491.65	
	600 shares	8-15-41	24,737.49	
	300 shares	8-22-41	12,368.75	
	1250 shares not sold during the year @ 37-3-16		46,484.37	

2.	2,000 shares Common Stock of Amalgamated Leather Companies, Inc., a Delaware corporation, par value $1.00 per share @ 1¼			2,250.00
	Not disposed of during year @ ⅝	12-19-41	1,250.00	
3.	900 shares of Common Stock of American Chain & Cable Company, Inc., a New York corporation, no par value @ 20¼			18,225.00
	Not disposed of during year @ 18¾	12-19-41	16,875.00	
4.	536 shares Capital Stock of American Telephone & Telegraph Company, a New York corporation, par value $100. per share @ 166¼			89,043.00
	Not disposed of during year @ 125-7/16	12-19-41	67,234.50	
Total (also enter under the Recapitulation Schedule O)			1st col. $	2nd col. $ 3rd col.

(If more space is needed insert additional sheets of same size.)

Estate of Sidney M. Spiegel, deceased.

62 Instructions for Schedule B—Continued.

Examples Showing Use of Schedule B

Example where the optional valuation is not adopted; date of death, January 1, 1940.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	Sixty $1,000 Arkansas Railroad Co. first mortage 4 percent, 20-year bonds, due 1950. Interest payable quarterly on February 1, May 1, August 1, and November 1. New York Exchange at 100			$60,000
	Interest coupons attached to bonds, item 1 due and payable on November 1, 1939, but not cashed at date of death			600
	Interest accrued on item 1, from November 1, 1939, to January 1, 1940			400
2.	Five hundred shares Public Service Corporation, common, par $100, at 110 ex dividend, New York Exchange			55,000
	Dividend on item 2 of $2 per share declared December 10, 1939, payable on January 10, 1940, to holders of record on December 30, 1939			1,000

Example where the option valuation is adopted; date of death, January 1, 1940.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	Sixty $1,000 Arkansas Railroad Co. first mortgage 4-percent, 20-year bonds, due 1950. Interest payable quarterly on February 1, May 1, August 1, and November 1. New York Exchange at 100 on date of death			$60,000
	Thirty of such $1,000 bonds distributed to legatees on August 1, 1940. New York Exchange at 99	8/1/40	$29,700	

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	Thirty of such $1,000 bonds sold by executors on September 1, 1940, at 99	9/1/40	29,700	
	Interest coupons attached to bonds, item 1, due and payable on November 1, 1939, but not cashed at date of death. Cashed by executor on February 1, 1940	2/1/40	600	600
	Interest accrued on item 1 from November 1, 1939, to January 1, 1940. Cashed by executor, February 1, 1940	2/1/40	400	400
2.	Five hundred shares Public Service Corporation, common, par $100. New York Exchange. At 110, ex dividend, on date of death. At 90 on January 1, 1941, not disposed of within year following death	1/1/41	45,000	55,000
	Dividend on item 2 of $2 per share declared December 10, 1939, and paid on January 10, 1940, to holders of record on December 30, 1939	1/10/40	1,000	1,000

63 Schedule B (continued).

5.	200 shares Common Stock of The Atlantic Refining Company, a Pennsylvania corporation, par value $25.00 per share @ 24			$4,800.00
	Not disposed of during year @ 25-15/16	12-19-41	$5,187.50	

6. 188 shares Capital Stock of Boeing Airplane Company, a Delaware corporation, par value $5.00 per share @ 17			3,196.00
Not disposed of during year at 18¾	12-19-41	3,525.00	
7. 800 shares Common Stock of Borg-Warner Corporation, an Illinois corporation, par value $5.00 per share @ 19			15,200.00
Not disposed of during year @ 20-1/16	12-19-41	16,050.00	
8. 1,000 shares Common Stock of Butte Copper Consolidated Mines, a South Dakota corporation	12-19-41	No value	No value
9. 600 shares Capital Stock of Caterpillar Tractor Co., a California corporation, no par value @ 49¾			29,925.00
Not disposed of during year @ 37¼	12-19-41	22,275.00	
10. 32 shares Capital Stock of Chicago National League Ball Club, an Illinois corporation, par value $100. per share @ 90	12-19-41		2,880.00
Not disposed of during year @ 80		2,560.00	

Estate of Sidney M. Spiegel, deceased.

64. Schedule B (cont'd.)

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
11.	120 shares Capital Stock of The Joseph Dixon Crucible Company, a New Jersey corporation, par value $100. each @ 30			$3,600.00
	Sold during year	8-5-41	$5,032.80	
12.	650 shares Common Stock of Dresser Manufacturing Company, a Pennsylvania corporation, no par value @ @ 21⅞			14,218.75
	Sold during year following death:			
	150 shares	8-25-41	2,885.69	
	100 shares	8-28-41	1,927.96	
	200 shares	8-29-41	3,855.92	
	200 shares not disposed of during year @ 12-13/16	12-19-41	2,562.50	
13.	306 shares Common Stock of E. I. duPont de Nemours & Company, a Delaware corporation, par value $20. per share @ 161½			49,419.00
	Not disposed of during year @ 139½	12-19-41	42,687.00	
14.	346 shares Common Stock of Electric Bond and Share Company, a New York corporation, par value $5.00 per share @ 3¾			1,340.75
	Sold during year	8-31-41	827.18	

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
15.	500 shares Common Stock of Eversharp, Inc., a Delaware Corporation, par value $1.00 per share @ 1⅞			937.50
	Not disposed of during year @ 2⅜	12-19-41	1,187.50	
Estate of Sidney M. Spiegel, deceased.				
16.	600 shares 5% Cumulative Preferred Stock of Eversharp, Inc., a Delaware corporation, par value $20. per share @ 7⅞			$4,725.00
	Not disposed of during year @ 8⅝	12-19-41	$5,175.00	
17.	700 shares Class A Common Stock of The Florsheim Shoe Company, an Illinois corporation, no par value @ 23			16,100.00
	Not disposed of during year @ 19⅛	12-19-41	13,387.50	
18.	500 shares Common Stock of Food Machinery Corporation, a Delaware corporation, par value $10 per share @ 31¼			15,562.50
	Not disposed of during year @ 32	12-19-41	16,000.00	
19.	905 shares Common Stock of General Motors Corporation, a Delaware corporation, par value $10. per share @ 49½			44,797.50
	Not disposed of during year at 29 11/16	12-19-41	26,867.19	

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
20.	348 shares Common Stock of The Glidden Company, an Ohio corporation, no par value @ 13⅝			4,741.50
	Sold during year	8-12-41	5,485.32	
	Estate of Sidney M. Spiegel, deceased.			
21.	600 shares Common Stock of The Goodyear Tire and Rubber Company, an Ohio corporation, no par value @ 18⅜			$11,025.00
	Not disposed of during year @ 11 6/8	12-19-41	$7,050.00	
22.	200 shares Common Stock of Investors Telephone Company, a Delaware corporation, no par value @ 16½			3,300.00
	Not disposed of during year @ 13	12-19-41	2,600.00	
23.	250 shares Common Stock of James Mfg. Co., a Wisconsin corporation, par value $25. per share at 19			4,750.00
	Not disposed of during year @ 19	12-19-41	4,750.00	
24.	500 shares Common Stock of Johns-Manville Corporation, a New York corporation @ 60		26,125.00	30,000.00
	Not disposed of during year @ 52¼	12-19-41	26,250.00	

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
25.	300 shares Capital Stock of Kennecott Copper Corporation, a New York corporation, no par value @ 35¼			10,537.50
	Not disposed of during year @ 35¼	12-19-41	10,537.50	
	Estate of Sidney M. Spiegel, deceased.			
26.	210 shares Capital Stock of Lake Shore Trust and Savings Bank, an Illinois corporation, par value $50. per share @ 74			$15,540.00
	Not disposed of during year @ 69½	12-19-41	$14,595.00	
27.	50 shares 6% Preferred Stock, of the par value of $55. per share, and 50 shares of Common Stock, without par value, of Metropolitan Industries Company @ 11			550.00
	Not disposed of during year @ 19	12-19-41	950.00	
28.	400 shares Common Stock of Motor Products Corporation, a New York corporation, no par value @ 11¼			4,500.00
	Not disposed of during year @ 5 15/16	12-19-41	2,375.00	
29.	50 shares First Preferred Series A 6% Preferred Stock of North American Car Corporation, an Illinois corporation, no par value @ 69			3,450.00
	Sold during year	11-8-41	4,936.00	
	Estate of Sidney M. Spiegel, deceased.			

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
30.	246 shares Common Stock of The North American Company, a New Jersey corporation, no par value @ 16½			$4,066.75
	Not disposed of during year @ 9 13/16	12-19-41	$2,413.88	
31.	250 shares in One La-Salle Company, an Illinois corporation @ 11½			2,875.00
	Sold during year	8-1-41	2,987.50	
32.	140.40 shares Common Stock of 110 South Dearborn Street Corporation, par value $10. per share, not sold during year	12-19-41	10,000.00	10,000.00
33.	2,700 shares Common Stock of Parker Rust Proof Company, a Michigan corporation, par value $2.50 per share @ 19½			52,650.00
	Sold during year:			
	1100 shares	8-21-41	19,369.60	
	900 shares	8-25-41	16,257.80	
	200 shares	8-26-41	3,565.62	
	500 not disposed of during year following death @ 14¾	12-19-41	7,375.00	
34.	533 shares Common Stock of Parker-Wolverine Company, a Michigan corporation, no par value @ 11¼			5,996.25
	Sold during year:			
	100 shares	8-20-41	733.98	
	233 shares	9-8-41	1,647.81	
	100 shares	9-25-41	708.98	
	100 shares	9-29-41	683.98	

Estate of Sidney M. Spiegel, deceased.

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
35.	375 shares Common Stock of Philip Morris & Co., Ltd., a Virginia corporation, par value $10. per share @ 77			$28,875.00
	Not disposed of during year @ 75¼	12-19-41	$28,171.88	
36.	750 shares Capital Stock of Phillips Petroleum Company, a Delaware corporation, no par value @ 40			30,000.00
	Not disposed of during year @ 45½	12-19-41	34,125.00	
37.	200 shares Common Stock of Pillsbury Flour Company, a New Jersey corporation, par value $25.00 per share @ 22½			4,500.00
	Not disposed of during year @ 13¼	12-19-41	2,650.00	
38.	600 shares Common Stock of St. Regis Paper Company, a New York corporation, par value $5.00 per share @ 2⅜			1,425.00
	Not disposed of during year @ 1 9/16	12-19-41	937.50	
39.	3,400 shares Common Stock of Standard Screw Company, a New Jersey corporation, par value $20. per share @ 41			139,400.00
	1700 shares sold during year following death:	8-4-41	64,579.60	
	1700 shares not disposed of during year following death at 45½	12-19-41	77,350.00	

Estate of Sidney M. Spiegel, deceased.

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
40.	1,000 shares Common Stock of Tide Water Associated Oil Company, a Delaware corporation, par value $10. per share @ 9½			
	Not disposed of during year @ 11 9/16			9,500.00
41.	250 shares Common Stock of 208 South La-Salle Street Corporation, a Delaware corporation, no par value @ 22½	12-19-41	$11,562.50	
	Not disposed of during year @ 21			5,625.00
42.	600 shares Capital Stock of United Aircraft Corporation, a Delaware corporation, par value $5. per share @ 42¾	12-19-41	5,250.00	
	Not disposed of during year @ 34¼			25,650.00
43.	333 shares Capital Stock of United Air Lines Transparent Corporation, a Delaware corporation, par value $5. per share @ 15	12-19-41	20,475.00	
	Not disposed of during year @ 9 15/16			4,995.00
44.	500 shares Common Stock of United Carbon Company, a Delaware corporation, without par value @ 47¼	12-19-41	3,309.18	
	Sold during year following death:			23,625.00
	Estate of Sidney M. Spiegel, deceased.	8-4-41	23,525.35	

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Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
45.	900 shares Common Stock of United States Steel Corporation, a New Jersey corporation, par value $100. per share @ 67⅞			
	Not disposed of during year @ 51¼	12-19-41	$46,125.00	$60,862.50
46.	6 units Washington Railway & Electric Company, Certificates of Beneficial Ownership @ 18⅜ at death			110.25
	Sold during year following death @ $13.50	7-31-41	81.00	
47.	2 $1,000.00 7% Sinking Fund Bonds of Banco Hipotecario de Colombia (Mortgage Bank of Colombia), due 11-1-46, with interest coupons due 11-1-32 and subsequent attached @ 22⅜			447.50
	Sold during year following death:	7-24-41	515.00	
48.	5 $1,000.00 4½% Drainage Sewer Bonds of City of Houston, due 1-1-50, with interest coupons due 1-1-41 and subsequent attached @ 121			6,050.00
	Not disposed of during year @ 125¼		6,262.50	
	Accrued interest from 7-1-40		100.92	100.92

Item No.	Description.	Subsequent valuation date	Value under option	Value at date of death
49.	10 $1,000.00 4% Permanent Improvement Bonds of the City of Minneapolis, due 11-1-52, with interest coupons due 5-1-41 and subsequent attached @ 122½			12,250.00
	Not disposed of during year @ 113		11,300.00	
	Accrued interest from 11-1-40		53.33	53.33
50.	10 $1,000 4½% Serial Gold Bonds of City and County of San Francisco Boulevard Bond Issue, due 11-1-51, with interest coupons due 5-1-41 and subsequent attached @ 127½			12,750.00
	Not disposed of during year @ 117¾		11,775.00	
	Accrued interest from 11-1-40		60.00	60.00
	Estate of Sidney M. Spiegel, deceased			
72	Schedule B (Con'd.)			
51.	35 $1,000 5% First and Refunding Mortgage Gold Bonds of Illinois Power and Light Corporation, due 11-1-56, with interest coupons due 6-1-41 and subsequent attached @ 106½			37,187.50
	Not disposed of during year @ 104¼		36,443.75	
	Accrued interest from 12-1-40		87.50	87.50

52.	1 $1,100 2% Debenture of Lake Shore Country Club, due 1-2-54, with interest coupon due 1-2-41 and subsequent attached @ 40			440.00
	Sold during year following death:	7-24-41	521.95	
	Accrued interest from 7-2-40		10.39	10.39
53.	5 $1,000 4% First Mortgage Bonds of The Southern Indiana Railway Company, due 2-1-51, with interest coupons due 2-1-41 and subsequent attached @ 47			2,350.00
	Not disposed of during year @ 53		2,650.00	
	Accrued interest from 8-1-40		77.77	77.77
54.	1 $1,000 6% First Mortgage Bond of Tokyo Dento Kabushiki-Kaisha, due 6-15-53, with coupons due 6-15-41 and subsequent attached @ 46			460.00
	Sold during year following death:	7-24-41	396.99	
	Accrued interest from 12-15-40		.67	.67
	Total (also enter under the Recapitulation, Schedule O)		$905,642.68	$1,005,995.33

73 Schedule C.

Mortgages, Notes and Cash.

Did the decedent, at the time of his death, own any mortgages, notes or cash? (Answer "Yes" or "No".) Yes

Item	Description	Subsequent valuation date	Value under option	Value to date of death
1.	Cash on deposit in checking account with Continental Illinois National Bank and Trust Company of Chicago	12-19-41	$53,575.42	$53,575.42
2.	Cash on hand held for deposit at date of decedent's death	12-19-41	2,666.52	2,666.52
3.	Cash on deposit in checking account with American National Bank and Trust Company of Chicago	12-19-41	1,464.27	1,464.27
4.	Petty cash fund held in office of decedent	12-19-41	11.89	11.89
5.	A 13-1/3% interest in the following investments, which are being administered by Joseph R. Pick, as agent:			
(a)	First Mortgage note of Domenico A. Roti on premises at 2601-03 Devon Avenue, Chicago, Illinois; originally due May 1, 1935, subject to forbearance agreement extending to October 1, 1941, with interest at 3% per annum $26,000.00			

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
(b)	First Mortgage notes of J. Milton Richardson on premises at 6406-08 Drexel Avenue, Chicago, Illinois, originally due 2-14-35, in the amount of $16,500, subject to forbearance agreement extending to 2-11-43, with interest at 5½% per annum			13,000.00

Estate of Sidney M. Spiegel, Deceased.

74 Schedule C (Continued)

(c)	Certificate No. 15 of Chicago Title and Trust Company, as Trustee under Trust No. 31953, known as Logan Court Apartments Liquidation Trust dated May 8, 1940, for 3,000 beneficial units therein, at "book cost"			$3,000.00
(d)	Cash ($1,975.68 less a real estate tax reserve of $861.69)			1,113.99
	Total Agency assets at "book cost" as at December 27, 1940 (at par, and exclusive of accrued interest)			43,113.99

Item	Description	Subsequent Valuation Date	Value Under Option	Value at Date of Death
	13⅓% thereof, representing decedent's interest 5,748.53			
	At ½ of cost	12-19-41	$2,874.27	$2,874.27
6.	$200.00 Promissory Note dated December 16, 1933, payable ninety days after date, without interest, signed by Julius P. Weiner	12-19-41	No Value	No Value
7.	$1,000 Note, signed by B. M. Rosenheim, dated April 3, 1936, payable without interest "sometime after date"	12-19-41	No Value	No Value
8.	$11,613.15 promissory note due from Edwin P. Goldsmith. Said note was originally due April 4, 1933, dated April 4, 1932, interest 5%	12-19-41	No Value	No Value
	Estate of Sidney M. Spiegel, deceased			
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9.	$7207.50 due from Carl Neuberger upon three promissory notes dated 12-10-30, 2-7-31 and 5-20-31, each bearing interest at 6% per annum	12-19-41	No Value	No Value
10.	$22.15 due from Sulka & Company, merchants, Chicago. This represents merchandise credit due to decedent at date of death	12-19-41	$22.15	$22.15

11. $310.00 book account due from Chicago Committee for Jewish Refugees, 130 North Wells St., Chicago, Ill. Correspondence in decedent's files indicates the existence of an arrangement whereby the amount of the advance was to be repaid by one Dr. Bissler before December, 1942	12-19-41	No Value	No Value
TOTAL (also enter under the Recapitulation, Schedule O)		$60,614.52	$60,614.52

Estate of Sidney M. Spiegel, Deceased

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Schedule D

Insurance

(See Instructions on reverse of this sheet)

(1) Was any insurance on life of decedent receivable by his estate? (Answer "Yes" or "No.") No.

(2) Was any insurance on life of decedent receivable by beneficiaries other than the estate? (Answer "Yes" or "No.") No.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	None			None
TOTAL			$	$
Less amount receivable by beneficiaries, other than the estate, not in excess of $40,000			$	$
TOTAL Included (also enter under the Recapitulation, Schedule O)			$	$

(If more space is needed, insert additional sheets of same size.)

Estate of Sidney M. Spiegel, deceased. Sheet VII

77 Instructions For Schedule D

Insurance

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system.

Life insurance not includible in the gross estate under the provisions of subsection (g) of section 811 of the Internal Revenue Code and the estate tax regulations pertaining thereto may, depending upon the facts of the particular case, be includible under some other subsection of section 811 and the applicable regulations, such as subsection (c) in the case of insurance "taken out" by the decedent on or prior to the date of Treasury Decision 5032 and also transferred by him on or prior to such date in contemplation of death.

Insurance in Favor of the Estate

The full amount of the proceeds of insurance on the life of the decedent receivable by the executor or administrator, or otherwise payable to or for the benefit of the estate, should be included in the gross estate. Insurance in favor of the estate includes insurance effected to provide funds to meet the estate tax, and any other taxes, debts, or charges which are enforceable against the estate. The manner in which the policy is drawn is immaterial so long as there is an obligation, legally binding upon the debts, or charges. The full amount is so includible even though the premiums or other consideration wherewith the insurance was acquired may have been paid by a person other than the decedent. The special insurance exemption of $40,000 is not applicable against the proceeds of insurance in favor of the estate.

Insurance Receivable by Beneficiaries Other Than the Estate

Insurance taken out by the decedent on his own life and receivable by beneficiaries other than the estate is includible in the gross estate as hereinafter set forth.

Insurance receivable by beneficiaries other than the estate is considered to have been "taken out" by decedent

where he paid, either directly or indirectly, all the premiums or other consideration wherewith the insurance was acquired, whether or not he made the application. Such insurance is not considered to have been so "taken out," even though the application was made by the decedent, if no part of the premiums or other consideration was paid either directly or indirectly by him. Where a portion of the premiums or other consideration was actually paid by another and the remaining portion by the decedent, either directly or indirectly, such insurance is considered to have been "taken out" by the latter in the proportion that the payments therefor made by him bear to the total amount paid for the insurance.

Legal incidents of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possessed a legal incident of ownership if his death is necessary to terminate his interest in the insurance, as, for example, if the proceeds would become payable to his estate, or payable as he might direct, should the beneficiary predecease him.

Decedent dying on or before January 10, 1941.—In case the decedent died on or before January 10, 1941, the date of Treasury Decision 5032, the amount in excess of $40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate to the extent to which such insurance was taken out (purchased or premiums paid) by the decedent and with respect to which the decedent possessed any of the legal incidents of ownership at the time of his death.

Decedent dying after January 10, 1941.—In case the decedent died after January 10, 1941, the date of Treasury Decision 5032, the amount in excess of $40,000 of the aggregate proceeds of all insurance on the decedent's life not receivable by or for the benefit of his estate must be included in his gross estate as follows:

(1) To the extent to which such insurance was "taken out" (purchased or premiums paid) by the decedent on or before January 10, 1941, and with respect to which the decedent possessed any of the legal incidents of ownership at any time after such date; and

(2) To the extent to which such insurance was "taken out" (purchased or premiums paid) by the decedent after January 10, 1947, regardless of whether he possessed any of the legal incidents of ownership therein at any time.

The estate is entitled to only one exemption of $40,000 upon insurance receivable by beneficiaries other than the estate. For instance, if the decedent left life insurance otherwise includible in the gross estate and payable to three such beneficiaries in amounts of $10,000, $40,000, and $50,000 (total, $100,000), the full amount should be listed in the schedule and therefrom subtracted the $40,000 exemption in the space provided thereon. The word "beneficiaries," as used in reference to this $40,000 exemption, means persons entitled to the actual enjoyment of the insurance money.

Example: Insurance on the life of the decedent who died after January 10, 1941, the date of Treasury Decision 5032, totaled $200,000. It was payable to his son as beneficiary and the decedent never possessed any of the legal incidents of ownership therein. Premiums aggregating $100,000 were paid for the insurance, of which the decedent paid $50,000 before the date of Treasury Decision 5032 and $30,000 after that date. The remaining premiums of $20,000 were paid by the son. The extent to which the insurance was "taken out" by the decedent after the date of the Treasury decision is the proportion of $200,000 that the amount of the premiums paid by him after such date, $30,000, bears to the total amount of the premiums paid for the insurance, $100,000. Such proportion is three-tenths of $200,000, or $60,000. As the decedent possessed none of the legal incidents of ownership in the insurance at any time after the date of the Treasury decision, $100,000 of the insurance, the extent to which it was "taken out" by the decedent before such date $\left(\frac{50,000}{100,000} \times \$200,000\right)$, is excluded from the gross estate. The amount of $40,000, the extent to which the insurance was not "taken out" by the decedent $\left(\frac{20,000}{100,000} \times \$200,000\right)$, is also excluded from the gross estate. The amount of the insurance "taken out" by the decedent after the date of the Treasury decision, $60,000, is reduced by $40,000, the special insurance exemption, and the amount of the insurance included in the gross estate is $20,000.

Execution of Schedule.

Insurance payable to the estate should be listed first and the full amount entered in the fourth or fifth column. Immediately following should be disclosed under the second column headed "Description," all insurance payable to beneficiaries other than the estate whether or not the executor believes the insurance is includible before deduction of the special insurance exemption of $40,000. If the executor determines that the full amount of the proceeds of any policy payable to beneficiaries other than the estate is includible, before deduction of the insurance exemption, the full amount should also be entered in the fourth or fifth column. If the executor determines with respect to any policy that the entire proceeds are not so includible in accordance with instructions above, and enters no amount or an amount less than the full proceeds, a complete explanation of his determination, including a computation of the amount included, if any, should be submitted either on the schedule or in a separate statement attached. A photostatic copy of any such policy should also be filed with the return.

Deduction may be taken in the space provided near the bottom of the schedule equal to the amount of the proceeds of insurance receivable by beneficiaries other than the estate and included in the fourth or fifth column, but not exceeding $40,000. In describing a policy, state name of company, number of policy, and name of beneficiary.

The "Life Insurance Statement," Form 712, for each policy listed in the schedule should be obtained from the insurance company by the executor and filed with the return.

Estate of Nonresident Alien.

In the case of an estate of a nonresident alien of the United States, the proceeds of insurance on his life need not be included.

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Schedule E

Jointly Owned Property

(See Instructions on reverse of this sheet)

(1) Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? (Answer "Yes" or "No.") No.

(2) If so, state the name and address of each surviving cotenant.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	None		$	$ None
Total (also enter under the Recapitulation, Schedule O)			$	$

(If more space is needed, insert additional sheets of same size)

Estate of Sidney M. Spiegel, deceased Sheet VIII

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Instructions for Schedule E

Jointly Owned Property

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, with right of survivorship, must be disclosed under this schedule.

The full value of the property must be included in the gross estate, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth. Where it is shown that the property or any part thereof, or any part of the consideration with which the property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full considera-

tion in money or money's worth, there should be omitted only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants. For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of the value of the property should be included. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be included only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includible in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest of the decedent's cotenant or cotenants.

In every instance a statement under the column headed "Description" must disclose whether the whole or only a part of the property is included in the gross estate. If only a part of the property is included in the gross estate, the fair market value of the whole must be shown under "Description."

Property in which the decedent held an interest as a tenant in common should not be listed under this schedule, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under such other appropriate schedule. The decedent's interest in a partnership should not be included under this schedule, but should be shown under Schedule F, "Other miscellaneous property."

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Schedule F

Other Miscellaneous Property

(See Instructions on reverse of this sheet)

(1) Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.") No.

(2) Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.") Yes.

Item No.	Description		Subsequent Valuation date	Value under option	Value at date of death
				$	$
1.	Certificate of Indebtedness of $2,500.00 of The Standard Club				
2.	4 Platinum Vest Button Set, diamonds and emeralds	$150.00			No Value
	1 Pr. Gold Star Sapphire Link Buttons	50.00			
	1 Pr. Emerald and Diamond Links	200.00			
	2 Studs to match above	75.00			
	1 Gentleman's Diamond and Sapphire Ring	75.00			
	1 Pr. Small Pearl Studs	50.00			
	1 Fresh Water Pearl Scarf Pin	25.00			
	1 Vest Chain with 5 Pearls	25.00			
	1 Vest Chain with 7 Pearls, Small	15.00			
	1 Men's Waltham Pocket Watch	65.00			
	1 Gold Knife	5.00			
	1 Gold Locket	15.00			
	2 Gold Pencils	10.00			
	6 Gold Scarf Pins	100.00	$860.00		$860.00
Total (also enter under the Recapitulation, Schedule O)				$	$

(If more space is needed, insert additional sheets of same size)

Estate of Sidney M. Spiegel, deceased Sheet IX

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Instructions for Schedule F.

Other Miscellaneous Property.

Under this schedule list all items of the gross estate not returnable under any other schedule, such as the following: Debts due the decedent; interests in business; claims; rights; royalties; pensions; leaseholds; judgments; shares in trust funds; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock; farm machinery; automobiles; etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statements of assets and liabilities as of the valuation date and for the 5 years preceding, and statements of the net earnings for the same 5 years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In case of an interest in a trust fund duplicate copies of the trust instrument should be submitted.

In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life a person other than the decedent, the date of birth of such person should be stated.

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Schedule F (Continued).

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
3.	Office Furniture, as follows:			
	1 Large Steel Safe Cabinet,			
	1 4-Drawer Steel Filing Cabinet			
	1 "Carrier" Air Conditioning Unit			
	1 Walnut Executive's Desk and Leather Swivel Chair			

1 Leather Sofa 2 Upholstered Leather Visitor's Chairs 2 Wood Visitor's Chairs Leather Backing 1 Walnut Telephone Table 2 Wood Wastebaskets 2 Metal Smoke Stands 1 Brass Cuspidor 1 Double Pen Parker Desk Set 1 Walnut Secretary's Desk and Swivel Chair 1 Underwood Typewriter #2504300-5 Total value of above furniture	$ 225.00	$ 225.00
Total (also enter under Recapitulation, Schedule O)	$1,085.00	$1,085.00

Estate of Sidney M. Spiegel, deceased.

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Schedule G.

Transfers During Decedent's Life.

(See instructions on reverse of this sheet.)

(1) Did the decedent make any transfer described in the first paragraph (including the six subparagraphs) of the instructions on the reverse of this sheet? (Answer "Yes" or "No.") No.

(2) Did the decedent, within 2 years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No.

(3) Did the decedent, at any time, make a transfer of an amount of $5,000 or more without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the instructions for this schedule? (Answer "Yes" or "No.") Yes.

(4) If the answer to question (3) is "Yes" state date, amount or value, character of transfer, and motive which actuated the decedent in making the transfer.

See statement below.

(5) Were there in existence at the time of the decedent's death any trusts created during his lifetime? (Answer "Yes" or "No.") Yes.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	On Jan. 2, 1920 the decedent created a trust for the benefit of his three children, share and share alike, to which trust he transferred certain stocks described in the declaration of trust, a copy of which is attached hereto. On December 26, 1934 the decedent assigned all of his right, title and interest in and to all of his insurance to his children, effective as follows:		$	$
	To Sidney M. Spiegel, Jr.—			
	Name of Company — Policy No.			
	The Northwestern Mutual Life Ins. Co. — 524051			
	Do — 339031			
	Do — 573414			
	Do — 573415			
	Do — 922326			
	Do — 435045			
	Do — 435046			
	Total (also enter under Recapitulation, Schedule O)		$	$

(If more space is needed, insert additional sheets of same size.)

Estate of Sidney M. Spiegel, deceased.

Sheet X

84 Instructions for Schedule G.

Transfers During Decedent's Life.

In accordance with the provisions of subsections (c) and (d) of section 811 of the Internal Revenue Code, the following transfers made by the decedent during his life, by trust or otherwise, other than bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax, and must be included in the gross estate under this schedule.

(1) Transfers made after September 8, 1916, in contemplation of death.

(2) Transfers intended to take effect in possession or enjoyment at or after the decedent's death, or transfers contingent upon the decedent's death, i. e., where the decedent's death is a necessary condition to effect an indefeasible transfer of the property from him or his estate. For certain exceptions with respect to such transfers, see the Estate Tax Regulations.

(3) Transfers made after 10:30 p. m., eastern standard time, March 3, 1931, whereby the decedent retained the use, possession, right to the income, or other enjoyment of the transferred property for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or, except with respect to transfers made before 5 p. m., eastern standard time, June 6, 1932, for any period not ascertainable without reference to his death.

(4) Transfers (not otherwise includible) whereby the decedent retained the right to designate the person or persons who shall possess or enjoy the transferred property, or the income thereof, as follows:

(a) In case the transfer was made after 10:30 p. m., eastern standard time, March 3, 1931, and the right to so designate was retained by the decedent alone, for his life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or

(b) In case the transfer was made after 5 p. m., eastern standard time, June 6, 1932, and the right to so designate was retained by the decedent alone or in conjunction with

any other person or persons, for decedent's life, or for such a period as to evidence his intention that it should extend at least for the duration of his life and his death occurs before the expiration of such period, or for any period not ascertainable without reference to his death.

(5) Transfers whereby the enjoyment of the transferred property was subject at decedent's death to any change through the exercise of a power to alter, amend, revoke, or terminate, as follows:

(a) In case the transfer was made before 4:01 p. m., eastern standard time, June 2, 1924, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with a person having no substantial adverse interest in the transferred property.

(b) In case the transfer was made after 4:01 p. m., eastern standard time, June 2, 1924, and before June 23, 1936, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or in conjunction with any person (regardless of whether such person had a substantial adverse interest in the transferred property), or

(c) In case the transfer was made after June 22, 1936, regardless of whether the power was reserved at the time of the transfer or later created or conferred, and without regard to the source from which the power was acquired, regardless of whether the power was exercisable by the decedent alone or in conjunction with any person, and if in conjunction with any person, regardless of whether such person had a substantial adverse interest in the transferred property.

(6) Transfers effected after September 8, 1916, by the relinquishment in contemplation of death of his power to alter, amend, revoke, or terminate a transfer of property previously made by the decedent under conditions set forth in the preceding subparagraph (5).

For more detailed information, see the Estate Tax Regulations.

Transfers included in the gross estate should be valued as of the date of the decedent's death or, if the optional valuation is adopted, in accordance with subsection 811(j) of the Internal Revenue Code. If only a portion of the property is so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in the value of the gross

estate. If the transferee makes additions to the property, or betterments, the enhanced value of the property at the valuation date, due to such additions or betterments, should not be included. However, where only a portion of the value of the property is included, the value of the whole must be disclosed under the column headed "Description," together with an explanation of the proportionate inclusion.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth, it must have been made in good faith, and the price must have been an adequate and full equivalent and reducible to a money value. If the price was less than an adequate and full equivalent, only the excess of the fair market value of the property, as of the valuation date, over the price received by the decedent should be included in the gross estate. For the purpose of the estate tax the relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

All transfers made by the decedent during his life of an amount of $5,000 or more except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the tax or not. If the executor believes that such a transfer is not subject to the tax a statement of the pertinent facts should be made.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof must be filed with the return. If of public record, one of the copies should be certified; if not of record, one copy should be verified. If the decedent was a non-resident, only one copy need to be filed, certified or verified, as the case may be.

The name of the transferee, date and form of transfer, and a complete description of the property should be set forth in this schedule. Rents and other income must be included as explained under "Execution of Return" in the general instructions.

Nonresident alien. If the decedent was a nonresident alien the transfer must be included if the property was situated in the United States, either at the date of the decedent's death or at the date of the transfer.

85 Schedule G (Continued).

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	To Sidney M. Spiegel, Jr. (Contd.)			
	Name of Company — Policy No.			
	Northwestern Mutual Life Ins. Co., of Milwaukee, Wisc. — 573416			
	Do — 573417			
	Do — 573418			
	To Katherine J. Spiegel—			
	Name of Company — Policy No.			
	The Northwestern Mutual Life Ins. Co. — 922322			
	Do — 922323			
	Do — 922324			
	Do — 922325			
	The Mutual Benefit Life Ins. Co. of Newark, N. J. — 596152			
	Do — 597691			
	To Julia K. Michels—			
	Name of Company — Policy No.			
	The Mutual Benefit Life Ins. Co. of Newark, N. J. — 596153			
	Do — 596154			
	Do — 597692			
	Do — 597693			
	Massachusetts Mutual Life Ins. Co. — 296958			
	Do — 296959			
	Do — 296960			
	Estate of Sidney M. Spiegel, deceased.			

86. Know All Men By These Presents, that I, Sidney M. Spiegel, of the City of Chicago, County of Cook and State of Illinois, in consideration of One Dollar ($1.00) and other good and valuable considerations, have sold, transferred, assigned, set over and delivered, and by these presents do sell, transfer, assign, set over and deliver to Modie J. Spiegel and Sidney M. Spiegel, and the survivor of them, as Trustees, six hundred twenty-five (625) shares of the capital stock of Spiegel's House Furnishing Company and seven hundred fifty (750) shares of the capital stock of Spiegel May Stern Company, In Trust, nevertheless, for the following uses and purposes, and upon the following terms and conditions:—

1: The said Trustees, and the survivor of them, or any successor trustee, shall have full, absolute and complete power to hold, manage and control said shares and every part thereof; to sell, exchange, transfer or otherwise dispose of the same, or any part thereof, and to invest and reinvest the proceeds derived from any such sale or sales, or other disposition of said shares, or any part thereof, during the continuance of this trust. While said shares of stock, or any substitutes therefor, are held by said Trustees, or the survivor of them, or any successor Trustee, if any corporation whose stock or other securities are held by said Trustees should require any action of any kind to be taken, said Trustees, and the survivor and any successor trustee, shall have the same right to take any action which may be required of any stockholder or holder of any securities of any such corporation as if said Trustees, and the survivor and any successor held such shares or said securities in their own individual names and were the sole owners thereof.

2: The Trustees, and the survivor of them, and any successor trustee, shall collect and receive all income derived therefrom, or from any substitutes therefor, and shall during the life of myself, said Sidney M. Spiegel, divide said net income into three (3) equal parts, and pay or use one of said parts of said income to or for the maintenance, support and education of my three (3) children, Katharine J. Spiegel, Sidney M. Spiegel, Jr. and Julia K. Spiegel, such income to be distributed at convenient intervals each year. In the event that any of my said three (3) children shall die prior to my death, then the share of such income to which such deceased one of said three (3) children would have been entitled shall go to the child or children of such

deceased child of mine, in equal parts, and if there be no such child or children of any such deceased child of mine, then such income shall be divided equally among the survivors of said three (3) children of mine, and their descendants, per stirpes and not per capita.

3: Upon my death, the said Trustees, and the survivor of them, or any successor Trustee, shall divide said trust fund, and any accumulated income thereon then in the hands of said Trustees, equally among my said three (3) children, and if any of my said children shall have died, leaving any child or children surviving, then the child or children of such deceased child of mine shall receive the share of said trust fund to which its or their parent would have been entitled, and if any of my said three (3) children shall have died without leaving any child or children
87 him or her surviving, then the share to which such deceased child of mine would have been entitled shall go to my remaining children, and the descendants of any deceased child of mine per stirpes and not per capita.

4: If during the continuance of this trust there shall be any increase in the principal of said trust estate by reason of the declaration of any stock dividends or other increases or emoluments all such increases shall be and remain a part of said trust estate and shall be held by said Trustees upon the same terms and conditions as are herein set forth.

5: In the event of the death, refusal, inability, or failure for any reason to act of both said Trustees at any time during the continuance of this trust, then The Chicago Title & Trust Company shall become the successor Trustee, with the same rights, powers, duties and obligations as are herein vested in and imposed upon the Trustees, and the survivor thereof, hereinbefore named.

6: None of the beneficiaries of the trust estate shall at any time be permitted to anticipate the payments to which any of them may be entitled hereunder by any order, assignment or otherwise.

In Witness Whereof I have hereunto set my hand and seal, at Chicago, Illinois, as of the 2nd day of January, 1920.

Sidney M. Spiegel. (Seal)

We hereby accept the above-named shares of stock and agree to hold the same subject to the terms above-mentioned, as of the 2nd day of January, 1920.

Modie J. Spiegel. (Seal)
Sidney M. Spiegel. (Seal)

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Schedule H

Powers of Appointment

(See instructions on reverse of this sheet)

(1) Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No.") No.

(2) Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") No.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	None			None
	Total (also enter under the Recapitulation, Schedule O)		$	$

(If more space is needed, insert additional sheets of same size.)

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Instructions for Schedule H.

Powers of Appointment.

In accordance with subsection (f) of section 811 of the Internal Revenue Code, property passing under a general power of appointment must be included in the gross estate under this schedule if exercised by the decedent (A) by will, or (B) by deed resulting in any of the transfers described in subparagraphs (1), (2), (3), and (4) of the first paragraph of the instructions for Schedule G; except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess

of the fair market value, at the applicable valuation date, of the property passing under the power over the value of the consideration received by the decedent.

Only property passing under a general power should be included. A general power is one to appoint to any person or persons in the discretion of the donee (or appointor) of the power, or, however limited as to the persons or objects in whose favor the appointment may be made, if it is exercisable in favor of the donee, his estate, or his creditors.

Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with the return, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required. The copies must be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned for tax.

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Schedule I.

Property Previously Taxed.

(See instructions on reverse of this sheet.)

Name of donor or prior decedent .....
If a decedent, show date of death .....
If a donor, show date of gift ..... Residence of donor at time of gift, or of prior decedent at time of death .....

Item No.

Description of property, subsequent valuation dates, and description and amounts of mortgages or other liens paid
(Column A) Value under option.
(Column B) Income under option
(Column C) Value at date of death.
(Column D) Income accrued at date of death.
(Column E) Finally determined value in prior estate or gift.

None.

Totals $..... $..... $..... $..... $.....

Total included in gross estate (total of columns A and B, or total of columns C and D, whichever is applicable) (also enter under Recapitulation, Schedule O) $.....

(a) Gross deduction (total of applicable column A or C, or total of column E, whichever is lower) $.....

(b) Total amount paid on mortgages or other liens deducted in prior estate or gift (enter detailed information at bottom of column headed "Description.") $.....

(c) Deduction for property previously taxed without proportionate reduction (item (a) minus item (b)) (also enter under Schedules P and Q, or Schedule R.) $.....

(If more space is needed, insert additional sheets of same size.)

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Instructions for Schedule I.

Property Previously Taxed.

Property includible in the gross estate that was received from a person who died within 5 years prior to the decedent's death or received by gift within 5 years prior to the decedent's death, or acquired in exchange thereof, with respect to which a deduction is authorized because an estate tax was paid by the prior estate or a gift tax was paid by the donor, should be returned in this schedule. The deduction for such property is authorized under the provisions of section 812 (c) or section 861 (a) (2) of the Internal Revenue Code, in accordance with the following conditions and limitations:

(a) Conditions:

(1) The property must have been received by the decedent by gift, bequest, devise, or inheritance from a prior decedent who died within 5 years of the decedent's death, or received by him as a gift within 5 years of his death.

(2) The property must be identified either as the same which the decedent so received or as property acquired in exchange therefor.

(3) The property so received must have formed a part of the gross estate situated in the United States of such prior decedent, or have been included in the total amount of gifts of the donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) No such deduction, in respect to the property or property exchanged therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) Limitations:

(1) The deduction is limited to the aggregate value of the property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the value of the gross estate of the present decedent, whichever is lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any

mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced by the proportion of the total other deductions (allowable under Schedules J, K, L, M, and N, and the specific exemption if applicable) which the amount otherwise deductible for property previously taxed bears to the amount of the gross estate.

The value of each item of property and any income thereon determined as of the applicable date or dates for inclusion in the value of the gross estate of the present decedent should be entered under the appropriate columns A, B, C, and D. It will be noted that column A is provided for the value under the option of the principal of each item of property and column B for any income thereon under the option, and that column C is provided for the value at the date of the decedent's death of the principal of each item of property, and column D is provided for any income thereon accrued to the date of death. The value finally determined in the prior estate or gift of each item of property should be entered in column E.

The description should show the schedule and item number of the property as it appeared in the prior return. To make it clear that the schedule and item number relate to the prior return, they should be included in parentheses. If only a portion of an item in the prior estate is reflected in the present estate, that fact should be indicated and only a proportionate part of the value of the item in the prior estate, as finally determined, should be entered in column E.

In accordance with the foregoing second limitation, any amount paid before the death of the present decedent in discharge of a mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in the prior case, should be shown last under the column headed "Description," together with an identification of the item of property involved and the item deducted in the prior case. The total of such amounts paid should be entered at item (b).

It will be noted that the "Total included in gross estate" (included in the value of the gross estate utilized for the computation of the tax) is the total of columns A and B if the optional valuation is adopted, or the total of columns C and D if the optional valuation is not adopted.

However, if the optional valuation is adopted, both such totals should be entered under the appropriate columns under the Recapitulation, Schedule O.

The amount of the gross deduction for property previously taxed, in accordance with the first limitation, is entered at item (a). If the optional valuation is adopted, the amount of the gross deduction is the total of column A or the total of column E, whichever is the lower. If the optional valuation is not adopted, the amount of the gross deduction is the total of column C or the total of column E, whichever is the lower. The amount of item (b) is subtracted from the amount of item (a); and the difference, which is entered at item (c), is the amount of the deduction as reduced in accordance with the second limitation. The amount of the net deduction for property previously taxed, as reduced by a certain proportion of the total other deductions in accordance with the third limitation, is finally computed under Schedules P and Q or under Schedule R.

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Deductions.

Schedule J.

Funeral and Administration expenses

(See instructions on reverse of this sheet)

Item No.	Funeral Expenses	Amount
1.	Room, board and sundry expenses of last illness— The Standard Club	$ 208.62
2.	Medical services, last illness— Herbert F. Binswanger, M. D.	115.00
3.	Elastic purchased for decedent— Riddle & Michaelis	1.50
4.	To reimburse Miss Spiegel for drug bills, nurses' fees and other expenses of decedent—Katherine J. Spiegel	299.58
5.	Condolence acknowledgments— Secretaries, Inc.	98.49
6.	Organist services at funeral— Ralph Morse Gerber	15.00
7.	Funeral services—Furth & Co.	624.60
Total (also enter under the Recapitulation, Schedule O)		$1362.79

Amount of executors' commissions (also enter under the Recapitulation, Schedule O) None.
Estimated /agreed upon/ paid. (Strike out words not applicable.)

Amount of attorneys' fees (also enter under the Recapitulation, Schedule O) Pd. 1941 $6000.00
Estimated /agreed upon/ paid. (Strike out words not applicable.)

Item No.	Miscellaneous administration expenses	Amount
8.	F. O. A. B. tax for quarter ended 3/31/41—Collector of Internal Revenue	$ 10.00
9.	For reimbursement of court costs and miscellaneous cash expenses—Mayer, Meyer, Austrian & Platt	146.75
10.	Additional court costs—Mayer, Meyer, Austrian & Platt	26.51
11.	Estimated Administration expenses	250.00
12.	Altschuler Melvion & Glasser, for accounting services	3500.00
	Total (also enter under the Recapitulation, Schedule O)	$3933.26

(If more space is needed, insert additional sheets of same size.)

Estate of Sidney M. Spiegel, deceased.

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Instructions for Schedule J.

Funeral and Administration Expenses.

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. An item may be entered for deduction though the exact amount is not known at the time, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Preserve all vouchers and receipts for inspection by an Internal Revenue agent.

The executor or administrator, when filing the return, may deduct his commissions in such an amount as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In the case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. If the commissions claimed have not been paid at the time of the final audit of the return, the amount deducted must be supported by an affidavit of the executor stating that such amount has been agreed upon and will be paid.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

When filing the return there may be deducted such an amount of attorney's fees as has actually been paid or

which at that time it is reasonably expected will be paid. If on the final audit of the return the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the fees claimed have not been paid at the time of the final audit of the return, the amount deducted must be supported by an affidavit of the executor or the attorney stating that such amount has been agreed upon and will be paid.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses as contemplated by the statute.

Executors and attorneys should note that executors' commissions and attorneys' fees constitute taxable income and that the amounts received or receivable by them as such compensation are cross-referenced for income-tax purposes.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Deduction for property taxes is limited to such taxes so accrued prior to the decedent's death. Credit to a limited extent may, under "Computation of Tax", sheet XX be claimed for estate, legacy, succession, inheritance, and gift taxes.

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Schedule K

Debts of Decedent

(See Instructions on reverse of this sheet)

Date No.	Creditor and nature of claim	Amount
1.	F.O.A.B. tax, quarter ended 12 31 40—Collector of Internal Revenue	$ 12.00
2.	Office salary—Florence Nierman	594.00
3.	Interest on additional 1938 assessment—Collector of Internal Revenue	6.18
4.	Insurance on Ashland Avenue property—Haskell, Miller, Grossman & Co.	30.24
5.	Telephone expense—Illinois Bell Telephone Co.	20.92
6.	First quarterly installment, 1940 Federal income tax of decedent—Collector of Internal Revenue	323.71
7.	1940 Personal property taxes of decedent—John Toman, County Collector	7.34
8.	1940 Personal property taxes of decedent—Sanborn Hale, Town Collector	162.79
9.	First installment, 1940 real estate taxes, Ashland Avenue property—John Toman, County Collector	115.53
10.	First installment, 1940 real estate taxes, Ashland Avenue property—John Toman, County Collector	154.75
11.	Second quarterly installment, 1940 Federal income taxes of decedent—Collector of Internal Revenue	323.71
12.	Additional Federal income tax assessment and interest, year 1940—Collector of Internal Revenue	2,276.98
13.	To reimburse Mr. Spiegal, Jr. for payment by him of additional 1938 income tax assessment against decedent Sidney M. Spiegal, Jr.	57.49
14.	Third and fourth quarterly installments, 1940 income taxes of decedent	647.42
15.	Second installment 1940 Real Estate Taxes upon Ashland Avenue property	270.28
	Total (also enter under the Recapitulation, Schedule O)	$5,003.34

(If more space is needed, insert addition sheets of same size)

Estate of Sidney M. Spiegal, deceased.

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Instructions for Schedule K.

Debts of Decedent.

Itemize under this schedule only valid debts of the decedent owed by him, at the time of death, except those secured by mortgage or other lien upon his property. Any indebtedness secured by a mortgage or other lien upon property of the gross estate should be entered under Schedule L. If the amount of the debt is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be stated.

If the claim is founded upon a promise or agreement the deduction is limited to the extent that the liability was contracted bona fide for an adequate and full consideration in money or money's worth. A pledge or subscription evidenced by a promissory note or otherwise, even though enforcible against the estate, is deductible only to the extent that such pledge or subscription was made bona fide for an adequate and full consideration in cash or its equivalent.

The deduction for property taxes is limited to such taxes as accrued prior to the date of the decedent's death. Federal taxes on income received during decedent's lifetime are deductible, but taxes on income received after death are not deductible.

Enter in this schedule notes unsecured by mortgage or other lien and give full details, including name of payee, face and unpaid balance, date and term of note, interest rate and date to which interest was paid prior to death. Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time, state the period covered by the claim. Example: Edison Electric Illuminating Co., for electric service during December 1939, $25.

If the amount of the claim is the unpaid balance due on a contract for the purchase of any property of the gross estate, indicate the schedule and item number where such property is returned. If the claim represents a joint and several liability, the facts must be fully stated and the financial responsibility of the co-obligor explained.

All vouchers or original records should be preserved for inspection by an Internal Revenue agent.

96 Schedule L.

Mortgages and Liens.

(See instructions on reverse of this sheet)

Item No.	Description	Amount
	None	$
	Total (also enter under the Recapitulation, Schedule O)	$

(If more space is needed, insert additional sheets of same size)

Estate of Sidney M. Spiegal, deceased.

97 Instructions for Schedule L.

Mortgages and Liens.

Itemize under this schedule only obligations secured by mortgages or other liens upon property included in the gross estate. List under this schedule all notes and other obligations secured by the deposit of collateral, such as stocks, bonds, etc. Debts of the decedent unsecured by mortgage or other lien upon the property should be listed under Schedule K. Identify, by indicating under the column headed "Description", the particular schedule and item number where such property subject to the mortgage or lien is returned under the gross estate. The full value of the property, without any reduction for the mortgage or other indebtedness, must be returned as part of the gross estate. Real estate situated outside the United States does not form a part of the gross estate for the purpose of the tax, and no deduction may be taken of any mortgage thereon, or any indebtedness in respect thereto.

Show the name and address of the mortgagee, payee, or obligee, and the date and term of the mortgage, note, or other agreement under which the indebtedness is established. Show the face, amount, the unpaid balance, the rate of interest, and date to which the interest was paid prior to the decedent's death.

Mortgages upon, or any indebtedness with respect to, property included in the gross estate is deductible only to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth.

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Schedule M.

Net Losses and Support of Dependents

(See instructions on reverse of this sheet)

Item No.	Net losses during administration	Amount
	None	$ None
	Total (also enter under the Recapitulation, Schedule O)	$ None

Item No.	Support of dependents	Amount
	The Child's Award was allowed by the Probate Court of Cook County, Illinois, to Katherine J. Spiegel, daughter of the decedent, who resided with him at the time of his death	$25,000.00
	Total (also enter under the Recapitulation, Schedule O)	$25,000.00

(If more space is needed, insert additional sheets of same size.)

Estate of Sidney M. Spiegel, deceased.

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Instructions for Schedule M

Net Losses and Support of Dependents

Losses.—Losses are strictly limited to those arising from fire, storm, shipwreck, or other casualty, or from theft, to the extent that such losses are not compensated for by Insurance or otherwise. Losses in order to be deductible must occur during the settlement of the estate. Depreciation in the value of securities or other property does not constitute a deductible loss. Such losses are not deductible if, at the time of the filing of the estate tax return, they had been claimed as a deduction for income tax purposes in an income tax return. In listing losses, full particulars must be given not only as to the loss sustained, but the cause thereof, and in the case of death of livestock, the cause of death must be stated, if known. If insurance or other compensation was received on account of loss, state the amount collected. The property with respect to which the loss is claimed should be identified by indicating the particular schedule and item number where such property is returned under the gross estate.

If the optional valuation is adopted, deduction for any loss is limited to the extent that such loss is not in effect allowed in the valuation of the item in the gross estate.

Support of dependents.—No deduction may be taken for support of dependents unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the support of the person in question during the settlement of the estate, and actual disbursement was made from the assets of the estate to the dependents.

100 **Schedule N**

Charitable, Public, and Similar Gifts and Bequests
(See Instructions on reverse of this sheet)

Item No.	Name and address of beneficiary	Character of institution	Amount
	None		$ None
Total (also enter under the Recapitulation, Schedule O)			$ None

(If more space is needed, insert additional sheets of same size)

Estate of Sidney M. Spiegel, deceased

101 **Instructions for Schedule N**

Charitable, Public, and Similar Gifts and Bequests

Instructions authorized for charitable, public, and similar gifts or bequests as set forth in the Estate Tax Regulations should be claimed under this schedule. If the transfer was made by will, duplicate copies, one certified, of the order admitting the will to probate, in addition to the copies of the will, should be submitted with the return. If the transfer was made by any other written instrument, duplicate copies thereof should be submitted with the return, and if the instrument is of record one copy should be certified and if not of record one copy should be verified. If the transfer was made by will, an affidavit of the executor must be submitted, showing whether the decendent's will has been, or to the best of his knowledge, information, and belief, will be contested. If claim is made for deduction of the value of the residue or of a portion thereof (e. g., present worth of a remainder interest in the residue), there should be submitted a copy of the computation whereby the value was determined.

If under the terms of the will or the law of the jurisdiction wherein the estate is administered or the law of the jurisdiction imposing the particular tax, the Federal estate tax or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible hereunder, the sum deductible is the amount of such bequest, legacy, or devise so reduced:

If the optional valuation is adopted, any bequest, legacy, devise, or transfer deductible under this schedule shall be valued for the purpose of the deduction as of the date of the decedent's death, with adjustment for any difference in the value of the property 1 year after his death, or at the date of its sale, or exchange within such year, except that no such adjustment may take into account any difference in value due to mere lapse of time or to the occurrence or nonoccurrence of a contingency.

For further instructions, see Estate Tax Regulations.

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Schedule O

Recapitulation

Schedule	Gross estate	Value under option	Value at date of death
A	Real estate	$ 15,000.00	$ 15,000.00
B	Stocks and bonds	905,642.68	1,005,995.33
C	Mortgages, notes, and cash	60,614.15	60,614.52
D	Insurance		
E	Jointly owned property		
F	Other miscellaneous property	1,085.00	1,085.00
G	Transfers during decedent's life		
H	Powers of appointment		
I	Property previously taxed		
	Total Gross Estate	$982,342.00	$1,082,694.85

Schedule	Deductions	Amount
J	Funeral expenses	$ 1,362.79
	Executors' commissions	
	Attorney's fees	6,000.00
	Miscellaneous administration expenses	3,933.26
K	Debts of decedent	5,003.34
L	Mortgages and liens	
M	Net losses during administration	
	Support of dependents	25,000.00
N	Charitable, public, and similar gifts and bequests	
	Total Deductions, except specific exemption and property previously taxed	$41,299.39

Schedule P

Net Estate for the Basic Tax—Resident or Citizen

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States.

1. Total gross estate		$982,342.20
2. Total deductions, except specific exemption and property previously taxed	$ 41,299.39	
3. Specific exemption	100,000.00	
4. Total deductions, except property previously taxed (item 2 plus item 3)	$141,299.39	
5. Deduction for property previously taxed without proportionate reduction (Schedule I, item c) $		
6. Proportionate reduction (proportion of item 4 that item 5 bears to item 1): $		
7. Net deduction for property previously taxed (item 5 minus item 6)	$	
8. Total deductions (item 4 plus item 7)		$141,299.39
9. Net estate (item 1 minus item 8)		$841,042.81

Estate of Sidney M. Spiegel, Deceased

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Schedule Q

Net Estate for the Additional Tax—Resident or Citizen

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States.

1. Total gross estate		$982,342.20
2. Total deductions, except specific exemption and property previously taxed	$41,299.39	
3. Specific exemption	$40,000.00	
4. Total deductions, except property previously taxed (item 2 plus item 3)	$81,299.39	
5. Deduction for property previously taxed without proportionate reduction (Schedule I, item c) $		
6. Proportionate reduction (proportion of item 4 that item 5 bears to item 1) $		
7. Net deduction for property previously taxed (item 5 minus item 6)	$	
8. Total deductions (item 4 plus item 7)		81,299.39
9. Net estate (item 1 minus item 8)		$901,042.81

Schedule R

Net Estate—Nonresident Alien

Instructions.—This schedule should be used only for the estate of a nonresident alien of the United States. No deductions are allowable hereunder unless the value of that part of the gross estate situated outside the United States is set forth.

1. Value of gross estate in the United States (Schedules A, B, C, D, E, F, G, H, and I)	$	
2. Value of gross estate outside the United States (insert itemized schedule sheet showing value)		
3. Value of total gross estate wherever situated (item 1 plus item 2)	$	
4. Gross deductions under Schedules J, K, L, and M		
5. Net deductions under Schedules J, K, L, and M (that proportion of item 4 that item 1 bears to item 3)	$	
6. Charitable, public, and similar gifts and bequests, Schedule N		
7. No deductions, except property previously taxed (item 5 plus item 6)	$	
8. Deduction for property previously taxed without proportionate reduction (Schedule I; item e)	$	
9. Proportionate reduction (proportion of item 7 that item 8 bears to item 1)	$	
10. Net deduction for property previously taxed (item 8 minus item 9)		
11. Total deductions (item 7 plus item 10)	$	
12. Net estate (item 1 minus item 11)	$	

Estate of .....

Instructions for Computation of Tax.

For computation of tax, use the table set forth on the inside of the back cover.

Item 1. "Gross basic tax" is computed, by means of column 1 of the table, on the value of the net estate shown under Schedule P or Schedule R, as the case may be.

Item 2. "Credit for gift tax" is limited to such credit allowable under the statute against the gross basic tax. The gift tax must have been paid by or on behalf of the decedent in respect of property included in the gross estate. The credit cannot exceed the proportion of the gross basic tax, item 1, that the value of the included gift taxed bears to the entire gross estate, unless the gift tax was imposed by the Revenue Act of 1924, as amended, in which case the entire amount is allowable as a credit against the gross basic tax.

Item 4. "Credit for estate, inheritance, legacy, or succession tax" is allowed for such taxes paid as the result of the decedent's death to any State, Territory, or the District of Columbia (or, if the decedent died after June 29, 1939, to any possession of the United States), with respect to property included in the gross estate. This credit cannot exceed 80 per cent of item 3. The anticipated amount of the credit may be entered at item 4 and the Federal estate tax shown on the return computed in accordance therewith before such State, etc., taxes have been paid, but the credit cannot be finally allowed unless such taxes are actually paid and the credit therefor is claimed within 4 years after the return is filed (or within such further period as provided by the statute in the case of a petition filed with the United States Board of Tax Appeals or in the case of an extension or postponement of time for the payment of tax), and such credit is supported by the following evidence.

(1) Certificate of the proper officer of the taxing State, Territory, District of Columbia, or possession of the United States showing: (a) The total amount of tax imposed (before adding interest and penalties and before allowing discount); (b) the amount of discount allowed; (c) the amount of penalties and interest imposed or charged; (d) the total actually paid in cash; and (e) the date of payment.

(2) A certificate of the above-mentioned officer showing whether (a) a claim for refund of such taxes or any part thereof is pending and (b) whether a refund of such taxes or any part thereof has been authorized. If any refund

has been made, the date, the amount thereof, and a description of the property or interest in respect to which such refund was made must be shown in the certificate.

(3) Such additional proof as the Commissioner may specifically request.

If practicable the evidence described in (1) and (2), above, should be filed with the return, but if that is not convenient or possible it should be submitted as soon thereafter as practicable.

Item 6. "Total gross taxes (basic and additional) (Tentative Tax)" are computed on the value of the net estate shown under Schedule Q or Schedule R, as the case may be. If the decedent died before September 21, 1941, column 2 of the table should be used for this item. (See examples 1, 2, and 3 below.) If the decedent died after September 20, 1941, column 3 of the table should be used for this item. (See example 4 below.)

Item 9. "Credit for gift tax" is limited to such credit allowable under the statute against the gross additional tax. The gift tax may have been paid by or on behalf of the decedent in respect of property included in the gross estate. Such credit cannot exceed the proportion of the gross additional estate tax that the value of the included gift taxed bears to the entire gross estate, and furthermore cannot exceed the difference between the total amount of such gift tax and the gift tax credit therefor allowed against the gross basic tax. No credit, however, is allowable against the gross additional tax for gift tax imposed by the Revenue Act of 1924, as amended.

Item 12. "Defense tax" is applicable if the decedent died after the date of the enactment of the Revenue Act of 1940 (June 25, 1940), and on or before the enactment of the Revenue Act of 1941 (September 20, 1941). The amount of the defense tax is 10 per cent of the total net basic and additional taxes, item 11.

Item 13. "Total estate tax payable" is the sum of the net basic tax, the net additional tax, and (if applicable) the defense tax.

Example (1) (estate of decedent who died before September 21, 1941, subject to the basic tax, the additional tax and the defense tax, and involving credit for State inheritance and estate taxes): A resident of the United States died July 1, 1940, and the value of the net estate shown under Schedule P is $219,000. The tax shown in the first subcolumn of column 1 of the table on a net estate equaling

$200,000 is $4,500. As $210,000 exceeds $200,000 and falls below $400,000, the tax on the excess of $10,000 is computed at the rate of 4 per cent, the rate shown in the second subcolumn of column 1. The $400 tax on such excess added to $4,500 gives $4,900, the gross basic tax which should be entered at item 1. Credit for gift tax is not involved in this example, but it will be assumed that the maximum amount of credit for State estate, inheritance, legacy, or succession taxes is allowable; that is, 80 per cent, or $3,920, which should be entered at item 4. The difference, which is the net basic tax, is $980. The net estate shown under Schedule Q is $270,000. The amount of the total gross taxes (basic and additional—Tentative Tax) shown in the first subcolumn of column 2 on a net estate equalling $200,000, is $26,600. As $270,000 exceeds $200,000 and falls below $400,000, the amount of the total gross taxes on the excess of $70,000 is computed at 20 per cent, the rate shown in the second subcolumn of column 2. The $14,000, computed on such excess, added to $26,600, gives $40,600, the total gross taxes, and $40,600 should be entered at item 6. From the $40,600 is subtracted $4,900, the gross basic tax, and the difference, $35,700, is the gross additional tax which should be entered at item 8. As in this example no credit for gift tax is involved, the gross additional tax is the same as the net additional tax. The net basic tax, $980, item 5, added to the net additional tax, $35,700, item 10, results in a total of $36,680 which should be entered at item 11. Since the decedent died after the date of the enactment of the Revenue Act of 1940 (June 25, 1940) and before September 21, 1941, the defense tax imposed is 10 per cent of $36,680, or $3,668, which should be entered at item 12. The sum of $36,680 and $3,668 (item 11 plus item 12) is $40,348, the total estate tax payable, which should be entered at item 13. The computation of the tax in this example is set up below:

1.	Gross basic tax	$4,900
2.	Credit for gift tax	0
3.	Gross basic tax less credit for gift tax	$4,900
4.	Credit for estate, inheritance, legacy or succession tax	3,920
5.	Net basic tax	$980

6. Total gross taxes (basic and additional) (Tentative Tax)	$40,600	
7. Gross basic tax	4,900	
8. Gross additional tax	$35,700	
9. Credit for gift tax	0	
10. Net additional tax		$35,700
11. Total net basic and additional taxes		$36,680
12. Defense tax		3,668
13. Total estate tax payable		$40,348

Example (2) (estate of decedent who died before September 21, 1941, subject to the additional estate tax and the defense tax only): A resident of the United States died on July 1, 1940, and the value of the gross estate is $85,000. Deductions for administration expenses and debts are allowed in the amount of $10,000, leaving $75,000 before the deduction of the specific exemption. As the specific exemption allowed by the Internal Revenue Code in determining the net estate upon which the basic estate tax is imposed is $100,000, it is apparent under Schedule P that this estate is not subject to such basic tax. However, as the specific exemption allowed by the Internal Revenue Code for the purpose of determining the additional estate tax is only $40,000, this estate is subject to such additional estate tax. For the purpose of the additional estate tax the net estate is $35,000 as would be shown under Schedule Q. The total gross taxes, shown in the first subcolumn of column 2 on a net estate equaling $30,000 are $1,200. As $35,000 exceeds $30,000 and falls below $40,000, the amount of the total gross taxes on the excess of $5,000 is computed at the rate of 8 per cent, the rate shown in the second subcolumn of column 2. The $400, computed on such excess, added to $1,200, gives $1,600, the total gross taxes. As no basic estate tax is imposed, this amount is the same as the gross additional tax, and since credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that no credit for estate, inheritance, legacy, or succession taxes is authorized in the computation of the additional tax. The decedent, having died after the date of the enactment of the Revenue Act of 1940 (June

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Computation of Tax.

(See instructions on reverse of Sheet XIX.)

1. Gross basic tax		$ 37,373.00	
2. Credit for gift tax			
3. Gross basic tax less credit for gift tax (item 1 minus item 2)		$ 37,373.00	
4. Credit for estate, inheritance, legacy or succession tax		29,898.40	
5. Net basic tax (item 3 minus item 4)			7,474.60
6. Total gross taxes (basic and additional) (Tentative Tax)		193,902.41	
7. Gross basic tax		37,373.00	
8. Gross additional tax (item 6 minus item 7)		156,529.41	
9. Credit for gift tax			
10. Net additional tax (item 8 minus item 9)			156,529.41
11. Total net basic and additional taxes (item 5 plus item 10)			164,004.01
12. Defense tax (10% of item 11)[1]			16,400.40
13. Total estate tax payable			180,404.41

Affidavit of Person or Persons Filing Return.

We, Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Robert Michels, the undersigned execute or swear that we have carefully examined this return (including the additional sheets inserted, if any); that to the best of our knowledge, information, and belief, herein is listed all of the

[1] License tax applicable if decedent died after June 25, 1940, and before September 21, 1941.

property constituting the decedent's gross estate, as defined by the statute (or if the decedent was a nonresident alien of the United States, herein is listed all of the property constituting the gross estate situated in the United States, as defined by the statute, and, if deductions are claimed, herein is listed separately all of the property constituting the gross estate situated outside the United States); that we have no knowledge of any transfers made or trusts created by the decedent during his lifetime of the value of $5,000 or more, other than bona fide sales for an adequate and full consideration in money or money's worth, except as stated in Schedule G; and that, to the best of our knowledge, information, and belief, the fair market value as of the date of the decedent's death is shown for every item of property listed herein under the gross estate (and, in case the optional valuation is herein adopted, that all of the distributions, sales, exchanges, and other dispositions within the year following the decedent's death of the property included in the gross estate, together with the dates thereof, are fully disclosed, and that the value under the option for every item of property is the fair market value as of the applicable valuation date or is such value as properly adjusted), that the debts, expenses, and charges entered herein as deductions from the gross estate are correct and legally allowable, and that all statements made herein are true and correct.

(Signature) Katherine J. Spiegel,
(Address) 410 Sheridan Road,
Winnetka, Ill.
(Signature) Sidney M. Spiegel,
(Address) 540 N. Michigan Ave.,
Chicago, Ill.
(Signature) Robert Michels,
(Address) 540 N. Michigan Ave.,
Chicago, Ill.

Sworn to and subscribed before me this 17th day of March, 1942.

(Notarial Seal.)

William C. Brooks,
Notary Public.
(Signature and title of officer administering oath)

Affidavit of Attorney or Agent Preparing Return.

I swear that I prepared this return for the person or persons signing the above affidavit and that this return, including the additional sheets inserted, if any, is a true, correct, and complete statement of all the information respecting the estate tax liability of this estate of which I have any knowledge.

(Signature) R. H. Charisman.
(Associated with Mayer Meyer Austrian & Platt.)
(Address)

Sworn to and subscribed before me this 17th day of March, 1942.

(Notarial Seal.) William C. Brooks,
Notary Public.

Estate of Sidney M. Spiegel, Deceased.

106 Instructions for Computation of Tax—Continued.

25, 1940) and prior to September 21, 1941, the defense tax imposed is 10 per cent of the net additional tax of $1,600 or $160. Consequently, the total tax payable in this case is $1,760.

Example (3) (estate of decedent who died before September 21, 1941, subject to the basic tax, the additional tax and the defense tax, and involving credits for State inheritance tax and for gift tax): The decedent, a resident of the United States, died on July 15, 1940. The total value of the gross estate is $490,000, the value of the net estate for the purpose of the basic estate tax is $225,000 and the value of the net estate for the purpose of the additional tax is $285,000. The gross basic tax computed on the net estate of $225,000 is $5,500 and the total gross taxes on the net estate of $285,000 are $43,600. (See explanation in the above examples of the use of the table in computing the tax.) The decedent transferred on January 15, 1940, in contemplation of death, certain real estate to his daughter as a gift. The value of the real property as of the date of the gift, and as of the time of death, was $144,000. As the result of this gift, a gift tax of $7,200 was paid on a net gift of $100,000 ($4,000 excluded and the specific exemption of $40,000 deduction under the gift tax provisions of the

Internal Revenue Code). As the value of the transferred real property is included in the decedent's gross estate, a credit for gift tax is allowed against the gross basic tax, $5,500, not to exceed the proportion of $5,500, item 1, that the value of the included gift, $140,000, bears to the entire gross estate, $400,000. It will be noted that the amount of the included gift is $144,000 less $4,000, the amount excluded in determining the amount for purposes of the gift tax. This proportion, which is ascertained by dividing $145,000 by $400,000, is 0.35. The gift tax credit allowed against the estate's basic tax is, therefore, 0.35 of $5,500, or $1,925, which is entered at item 2. The difference between $5,500 and $1,925 is entered at item 3. Maximum credit for State inheritance and estate taxes is allowed in this example in the amount of $2,860, entered at item 4. The net basic tax is $715, item 5. The total gross taxes of $43,600 are entered at item 6, the gross basic tax of $5,500 is entered at item 7, and the gross additional tax of $38,100 is entered at item 8. Credit for the gift tax paid ($7,200) is allowed against the gross additional tax, not to exceed the proportion of $38,100, item 8, that the value of the included gift, $140,000, bears to the entire gross estate, $400,000. The amount of this proportion is $13,335. However, this credit is further limited by an amount not to exceed the difference between the total of the gift tax, $7,200, and the credit, $1,925, allowed for such tax against the gross basic tax. This difference, $5,275, is the amount of the credit allowed against the gross additional tax, and is entered at item 9. The net additional tax, item 8 minus item 9, is $32,825, and is entered at item 10. The total net basic and additional taxes of $33,540 (item 5 plus item 10) is shown at item 11. The defense tax, which is applicable in this case, is $3,354 (10 per cent of item 11) and is entered at item 12. The total tax payable, $36,894, is entered at item 13. The computation of the tax in this example is set up as follows:

1.	Gross basic tax	$ 5,500	
2.	Credit for gift tax	1,925	
3.	Gross basic tax less credit for gift tax	$ 3,575	
4.	Credit for estate, inheritance, legacy, or succession tax	2,860	
5.	Net basic tax		$715
6.	Total gross taxes (basic and additional) (Tentative Tax)	$43,600	
7.	Gross basic tax	5,500	
8.	Gross additional tax	$38,100	
9.	Credit for gift tax	5,275	
10.	Net additional tax		$32,825
11.	Total net basic and additional taxes		$33,540
12.	Defense tax		3,354
13.	Total estate tax payable		$36,894

Example (4) (estate of decedent who died after September 20, 1941, subject only to the additional tax): A resident of the United States died on September 30, 1941, and the value of the gross estate is $75,000. Deductions for administration expenses and debts are allowed in the amount of $10,000, leaving $65,000 before the deduction of the specific exemption. As the specific exemption allowed by the Internal Revenue Code in determining the net estate upon which the basic estate tax is imposed is $100,000, it is apparent under Schedule P that this estate is not subject to such basic tax. However, as the specific exemption allowed by the Internal Revenue Code for the purpose of determining the additional estate tax is only $40,000, this estate is subject to such additional estate tax. For the purpose of the additional estate tax the net estate is $25,000, as would be shown under Schedule Q. The total gross taxes, shown in the first subcolumn of column 3 on a net estate equaling $20,000 are $1,600. As $25,000 exceeds $20,000 and falls below $30,000, the amount of the total

gross taxes on the excess of $5,000 is computed at the rate of 14 per cent, the rate shown in the second subcolumn of column 3. The $700, computed on such excess, added to $1,600, gives $2,300, the total gross taxes. Since no basic estate tax is imposed, this amount is the same as the gross additional tax, and since credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. (No credit for estate, inheritance, legacy, or succession taxes is authorized in the computation of the additional tax.) It will be noted that since the decedent died after the date of the enactment of the Revenue Act of 1941 (September 20, 1941), no defense tax is imposed upon such net additional tax. Consequently, the total tax payable in this case is $2,300.

107 Last Will and Testament
of
Sidney M. Spiegel,
Deceased

Admitted to probate by Probate Court of Cook County, Illinois, and Letters Testamentary issued to Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Robert Michels, on December 26, 1940.

Docket 399 Page 428 File 40 P 9062

Date of Death, December 19, 1940.

108 I, Sidney M. Spiegel, of Winnetka, County of Cook and State of Illinois, being of sound and disposing mind and memory, do hereby make, declare and publish this to be my last will and testament, hereby revoking any and all wills and codicils thereto by me at any time heretofore made:

First: I direct that all of my just debts and funeral expenses be first paid out of my estate.

My Executors, hereinafter appointed, shall pay, out of my estate and as part of the expenses of administration thereof, all Federal, State and other estate, inheritance, transfer and similar taxes imposed upon my said Execu-

tors, or my said estate, or upon any beneficiary under this Will by reason of any interest which such beneficiary may take under this Will.

Second: All of the rest, residue and remainder of my estate, of whatsoever kind or nature, whether real, personal or mixed and wheresoever situate, of which I may die seized or possessed or to or in which I have, at the date of my death, any right, title or interest (hereinafter referred to as my "residuary estate"), I hereby give, devise and bequeath as follows:

(a) To my beloved daughter, Katherine J. Spiegel, if she shall survive me, seventy-five per cent (75%) in value, as determined by my said Executors, of my said residuary estate.

(On left-hand margin—(Sgd.) Sidney M. Spiegel)

109 I have made the provision in this sub-clause (a) set forth for my said daughter, Katherine J. Spiegel, not on account of any greater love or affection for her than for my other children, but because so much of her life has been devoted to me and my welfare and also on account of other circumstances which I believe make such provision proper.

In the event that my said daughter, Katherine, shall predecease me, then, and in such event, said seventy-five per cent (75%) in value of my said residuary estate shall go, in equal shares per stirpes, to Katherine's descendants who shall survive me; provided, however, that, in the event that there shall be no such surviving descendant, then such seventy-five per cent (75%) in value of my said residuary estate shall go in equal shares to my beloved daughter, Julia S. Michels, and my beloved son, Sidney M. Spiegel, Jr., and, in the event either or both thereof shall predecease me, the descendants, who shall survive me, of said deceased daughter, Julia, or such deceased son, Sidney, shall take, in equal shares per stirpes, the respective share of said seventy-five per cent (75%) in value of my said residuary estate, which said deceased daughter, Julia, or deceased son, Sidney, would have taken had she or he survived me, or, in the event that either my said daughter, Julia, or my said son, Sidney, shall predecease me and shall leave no descendant who shall survive me, then the share of said seventy-five per cent (75%) in value of my said residuary estate which said deceased daughter, Julia, or deceased son, Sidney, would have taken had she or he

(On left-hand margin—(Sgn.) Sidney M. Spiegel)

110 survived me, shall go to the one of my said daughter, Julia, or my said son, Sidney, who shall survive me, or, in the event both thereof shall predecease me, then, in equal shares per stirpes, to the descendants, who shall survive me, of my said daughter, Julia, or my said son, Sidney.

(b) To said daughter, Julia, if she shall survive me, twenty-five per cent (25%) in value, as determined by my said Executors, of my said residuary estate.

In the event that my said daughter, Julia, shall predecease me, then, and in such event, said twenty-five per cent (25%) in value of my said residuary estate shall go in equal shares per stirpes, to Julia's descendants who shall survive me; provided, however, that, in the event that there shall be no such surviving descendant, then such twenty-five per cent (25%) in value of my said residuary estate shall go in equal shares to my said daughter, Katherine, and my said son, Sidney, and, in the event either or both thereof shall predecease me, the descendants, who shall survive me, of such deceased daughter, Katherine, or such deceased son, Sidney, shall take, in equal shares per stirpes, the respective share of said twenty-five per cent. (25%) in value of my said residuary estate, which said deceased daughter, Katherine, or deceased son, Sidney, would have taken had she or he survived me, or, in the event that either my said daughter, Katherine, or my said son, Sidney, shall predecease me and shall leave no descendant who shall survive me, then the share of said twenty-five per cent (25%) in value of my said residuary estate which said deceased daughter,

(On left-hand margin—(Sgd.) Sidney M. Spiegel)

111 Katherine, or deceased son, Sidney, would have taken had she or he survived me, shall go to the one of my said daughter, Katherine, or my said son, Sidney, who shall survive me, or in the event both thereof shall predecease me, then, in equal shares per stirpes, to the descendants, who shall survive me, of my said daughter, Katherine, or my said son, Sidney.

I have left no portion of my said residuary estate unconditionally to my said son, Sidney. I have not left him unconditionally any portion of said residuary estate because I believe that the provision I have made for him during my lifetime, together with his income derived from his business, should be sufficient amply to provide for his

needs. In any event, I feel that he, as a man, should be able to provide for himself much more readily than his sisters would be able to do.

Third: I hereby nominate and appoint my said daughter, Katherine J. Spiegel, my said son, Sidney M. Spiegel, Jr., and my son-in-law, Robert Michels, or such of them as may be qualified and willing to act, and the survivors and survivor of them, Executors of this my last will and testament, and I direct that none of them shall be required to give any surety or security on her or his bond for the faithful performance of her or his duties as such Executor hereunder. I hereby give to them, and the survivors and survivor of them, as such Executors, full, complete and

(On left-hand margin—(Sgd.) Sidney M. Spiegel)

112 absolute power, without order or authority from any court, to manage and control my estate in such manner as to them shall seem best, and to sell, lease (for any term whatsoever, including ninety-nine years or shorter leases and leases to commence in futuro), mortgage, encumber, pledge, hypothecate or otherwise dispose of all or any part of my estate, and, in short and without any limitation whatsoever, to do any and all things in and about the management and control of said estate which they could do if they were the absolute owners thereof.

The bequests and devises by this will made may be paid in whole or in part in money or in property, or in undivided interests in property, of the value specified in this will, and the determination by my said Executors of the value of any property constituting a portion of my said estate shall be conclusive and binding upon all interested persons. The fact that any Executrix or Executor hereunder may be interested in any bequest or devise under this will shall not prevent such Executrix or Executor from participating in the determination of any such valuation in connection with such bequest or devise or otherwise.

I have made no bequest for charitable, philanthrophic or educational purposes because I know that my children will, if in their judgment the amounts received by them respectively from my estate justify such course,

(On left-hand margin—(Sgd.) Sidney M. Spiegel)

113 make such gifts for such purposes, as would accord with my wishes in that regard.

In Witness Whereof, I have hereunto set my hand and seal, at Chicago, Illinois, this 20 day of April, A. D. 1938.

Sgd Sidney M. Spiegel. (Seal)

The foregoing Last Will and Testament, consisting of six (6) typewritten pages, this page included, was, by the Testator, Sidney M. Spiegel, signed, sealed, published and declared to be his Last Will and Testament in our presence and on the date it bears, and we have, at his request and in his presence and in the presence of each other, hereunto subscribed our names as witnesses thereto, this 20th day of April, 1938. We do hereby certify that, in our opinion, the said Testator was, at the time of such signing, sealing, publishing and declaring, of sound and disposing mind and memory.

Herbert A. Friedlich,
Residing at Highland Park, Ill.

Richard Grossman,
Residing at 5750 Kenwood Ave., Chicago, Ill.

Benjamin A. Ragir,
Residing at 4724 Drexel Blvd., Chicago, Ill.

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Codicil.

I, Sidney M. Spiegel, of Winnetka, County of Cook and State of Illinois, being of sound and disposing mind and memory, do hereby make, declare and publish the following to be a Codicil to my Last Will and Testament dated April 20, 1938:

First: I hereby add to, and include in, said Last Will and Testament, with the same force and effect as if therein originally set forth, the following additional clause to be known as clause "Second":

"Second: I hereby give and bequeath:

(a) To Theresa Siegel, now in my employ as a maid, the sum of Fifteen Hundred Dollars ($1500.00).

(b) To Elida Carlson, now in my employ as a maid, the sum of Five Hundred Dollars ($500.00).

(c) To Harry Kneibes, now in my employ as a gardener, the sum of Three Hundred Dollars ($300.00).

(d) To Magnus Janson, now in my employ as a chauffeur, the sum of Fifteen Hundred Dollars ($1500.00).

(e) To Florence Nierman, now in my employ as secretary, the sum of Fifteen Thousand Dollars ($15,000.00).

In the event, however, that any of the above named persons shall not be in my employ at the date of my death, or shall die prior to the date of my death, the bequest, in this clause Second contained, to such person, not then in my employ or so dying, shall lapse. All lapsed legacies shall be added to, and be deemed a part of, my residuary estate hereinafter mentioned."

115 Second: The present clause "Second" of said Last Will and Testament shall be deemed to be renumbered "Third" and the present clause "Third" of said Last Will and Testament shall be deemed to be renumbered "Fourth".

Third: Except as by this Codicil specifically amended, said Last Will and Testament shall remain in full force and effect as originally published and declared, and I hereby republish and redeclare said Last Will and Testament, as amended by this Codicil, as and for and to be my Last Will and Testament.

In Witness Whereof, I have hereunto set my hand and seal at Chicago, Illinois, this 15 day of June, A.D. 1938.

(Sgd.) Sidney M. Spiegel (Seal.)

The foregoing Codicil, consisting of two (2) typewritten pages (this page included), was by the Testator, Sidney M. Spiegel, signed, sealed, published and declared to be a Codicil to his Last Will and Testament dated April 20, 1938, in our presence and on the date said Codicil bears, and we have, at this request and in his presence and in the presence of each other, hereunto subscribed our names as witnesses to said Codicil, this 15th day of June, 1938. We do hereby certify that, in our opinion, the said Testator was, at the time of such signing, sealing, publishing and declaring, of sound and disposing mind and memory.

Donald M. Graham,
Residing at 2430 Greenleaf, Chicago, Illinois.

Benjamin A. Ragir,
Residing at 4524 Drexel Blvd., Chicago, Ill.

Richard Grossman,
Residing at 5750 Kenwood Ave., Chicago, Ill.

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STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE PROBATE COURT OF COOK COUNTY.

Will and Codicil proved and admitted to record in open Court this 26th day of December, A. D. 1940.

John F. O'Connell,
Probate Judge.

Frank Lyman,
Clerk of the Probate Court.

Clerk's Certificate—Form 42 "a" (2).

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Frank Lyman, Clerk of the Probate Court of Cook County and the keeper of the records and files thereof, in the State aforesaid, do hereby certify the annexed and foregoing to be true and correct copies, respectively, of the last will and testament and codicil thereto, of Sidney M. Spiegel, deceased, as appears from the originals on file and from the records of the Probate Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Probate Court, at my office, in the City of Chicago, in said County, this 5 day of Mar., A. D. 1941.

Frank Lyman,
Clerk of the Probate Court.

Letters Testamentary Form 16.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

IN THE PROBATE COURT OF COOK COUNTY.

In the Matter of the Estate of Sidney M. Spiegel, Deceased. } File 40P 9062 Docket 399 Page 428

Know all men by these presents that Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Robert Michels 117 have been appointed executors of the will and codicil thereto of Sidney M. Spiegel, deceased, who died on the 19th day of December, 1940, and are authorized to sue for and collect the personal estate of and debts due the decedent and to perform all duties imposed on them by the will and codicil thereto, so far as there is property and the law charges them; and to do all other acts now or hereafter required of them by law.

Witness, Frank Lyman, Clerk of the Probate Court of Cook County, and the seal of the Court, this 26th day of December, 1940.

Frank Lyman,
Clerk.

(Seal)

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, Frank Lyman, Clerk of the Probate Court of Cook County, Illinois, do hereby certify that the within is a true and correct copy of the letters testamentary issued on the 26th day of December, 1940, to Katherine J. Spiegel, Sidney M. Spiegel, Jr. and Robert Michels, upon the last will and codicil thereto of Sidney M. Spiegel, deceased, now in force, as it appears from the original on file and from the records of the Court in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Court, at Chicago, in said County, this 5 day of March, 1941.

Frank Lyman,
Clerk.

96 TABLE FOR COMPUTATION OF ESTATE TAX. 119

(A)	(B)	(1) For basic estate tax		(2) For additional estate tax (tentative tax—total gross basic and additional taxes) In effect prior to September 21, 1941		(3) For additional estate tax (tentative tax—total gross basic and additional taxes) In effect after September 20, 1941	
Net estate equalling—	Net estate not exceeding—	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			Percent		Percent		Percent
	$5,000		1		2		3
$5,000	10,000	$50	1	$100	2	$150	7
10,000	20,000	100	1	200	4	500	11
20,000	30,000	200	1	600	6	1,600	14
30,000	40,000	300	1	1,200	8	3,000	18
40,000	50,000	400	1	2,000	10	4,800	22
50,000	60,000	500	2	3,000	12	7,000	25
60,000	70,000	700	2	4,200	12	9,500	28
70,000	100,000	900	2	5,400	14	12,300	28
100,000	200,000	1,500	3	9,600	17	20,700	30
200,000	250,000	4,500	4	26,600	20	50,700	30
250,000	400,000	6,500	4	36,600	20	65,700	32
400,000	500,000	12,500	5	66,600	23	113,700	32
500,000	600,000	17,500	5	89,600	23	145,700	33
600,000	750,000	22,500	6	112,600	26	180,700	35
750,000	800,000	31,500	6	151,600	26	233,200	37
800,000	1,000,000	34,500	7	164,600	29	251,700	37
1,000,000	1,250,000	48,500	8	222,600	32	325,700	39
1,250,000	1,500,000	68,500	8	302,600	32	423,200	42
1,500,000	2,000,000	88,500	9	382,600	35	528,200	45
2,000,000	2,500,000	133,500	10	557,600	38	753,200	49
2,500,000	3,000,000	183,500	11	747,600	41	998,200	53
3,000,000	3,500,000	238,500	12	952,600	44	1,263,200	56
3,500,000	4,000,000	298,500	13	1,172,600	47	1,548,200	59
4,000,000	4,500,000	363,500	14	1,407,600	50	1,838,200	62
4,500,000	5,000,000	433,500	14	1,657,600	53	2,153,200	62
5,000,000	6,000,000	503,500	15	1,922,600	56	2,468,200	67
6,000,000	7,000,000	653,500	16	2,482,600	59	3,138,200	70
7,000,000	8,000,000	813,500	17	3,072,600	61	3,828,200	73
8,000,000	9,000,000	983,500	18	3,682,600	63	4,568,200	75
9,000,000	10,000,000	1,163,500	19	4,312,600	65	5,328,200	78
10,000,000	20,000,000	1,353,500	20	4,962,600	67	6,088,200	77
20,000,000	50,000,000	3,353,500	20	11,662,600	69	13,788,200	77
50,000,000		9,353,500	20	32,362,600	70	36,888,200	77

119 (Space for Use of Bureau) Sheet XXI

Tax on Return or Deficiency	Assessments: Amount	List	Page	Line	Payments: Date	Principal	Interest
Ret. Tax	180,404.41	Mar. 1942	104	5	3-19-42	180,404.41	

Determination by Bureau

tional tax tax le and taxes) after 20, 194	Rate of tax on excess over amount in column (A)
	Percent
	3
	11
	14
	18
	22
	26
	30
	32
	35
	38
	42
	45
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120 THE TAX COURT OF THE UNITED STATES.

Estate of Sidney M. Spiegel, Deceased, Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors, Petitioners, vs. Commissioner of Internal Revenue, Respondent.

Docket No. 1662.

Harry Thom, Esq., for the petitioners.

Harold H. Hart, Esq., for the respondent.

The Commissioner determined a deficiency of $454,788.58 in estate tax. The only question is whether the value of the corpus of a trust created by the decedent during his lifetime is includable in gross estate under Section 811 (c), Internal Revenue Code.

FINDINGS OF FACT.

The petitioners are the executors of the estate of Sidney M. Spiegel, who was born August 16, 1872, and died testate on December 19, 1940. The executors filed the estate tax return in Chicago, Illinois. The decedent left him surviving two daughters, Katherine J. Spiegel, born March 1, 1897, and Julia S. Michels, born March 7, 1907, a son, Sidney M. Spiegel, Jr., born August 8, 1904, and three grandchildren, Robert Michels, Jr., born August 21, 1930, Helen Katherine Michels, born November 17, 1936, and Sydney Ann Michels, born November 14, 1938.

On January 2, 1920, the decedent made an agreement by which he transferred in consideration of one dollar and other considerations, to Modie J. Spiegel and Sidney M. Spiegel, as trustees, 625 shares of Spiegel's House Furnishing Company, and 750 shares of Spiegel May Stern Company, in trust, for the uses and purposes and upon the terms and conditions in part as follows:

1. The said Trustees, and the survivor of them, or any successor trustee, shall have full, absolute and complete power to hold, manage and control said shares and every part thereof; to sell, exchange, transfer or otherwise dispose of the same, or any part thereof, and to invest and reinvest the proceeds derived from any such sale or sales, or other disposition

of said shares, or any part thereof, during the continuance of this trust. While said shares of stock, or any substitutes therefor, are held by said Trustees, or the survivor of them, or any successor Trustee, if any corporation whose stock or other securities are held by said Trustees should require any action of any kind to be taken, said Trustees, and the survivor and any successor trustee, shall have the same right to take any action which may be required of any stockholder or holder of any securities of any such corporation as if said Trustees, and the survivor and any successor held such shares or said securities in their own individual names and were the sole owners thereof.

2. The Trustees, and the survivor of them, and any successor trustee, shall collect and receive all income derived therefrom, or from any substitutes therefor, and shall during the life of myself, said Sidney M. Spiegel, divide said net income into three (3) equal parts, and pay or use one of said parts of said income to or for the maintenance, support and education of each of my three (3) children, Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Julia K. Spiegel, —such income to be distributed at convenient intervals each year. In the event that any of my said three (3) children shall die prior to my death, then the share of such income to which such deceased one of said three (3) children would have been entitled shall go to the child or children of such deceased child of mine, in equal parts, and if there be no such child or children of any such deceased child of mine, then such income shall be divided equally among the survivors of said three (3) children of mine, and their descendants, per stirpes and for per capita.

3. Upon my death, the said Trustees, and the survivor of them, or any successor Trustee, shall divide said trust fund, and any accumulated income thereon then in the hands of said Trustees, equally among my said three (3) children, and if any of my said
122 children shall have died, leaving any child or children surviving, then the child or children of such deceased child of mine shall receive the share of said trust fund to which its or their parent would have been entitled, and if any of my said three (3) children shall have died

without leaving any child or children him or her surviving, then the share to which such deceased child of mine would have been entitled shall go to my remaining children, and the descendants of any deceased child of mine per stirpes and not per capita.

The property was delivered to and accepted by the trustees on the date of the trust agreement.

Until the death of the grantor, the income of the trust was distributed to or for the benefit of the grantor's three children.

The estate tax return showed a net taxable estate of $841,042.81 for the basic tax and a net taxable estate of $901,042.81 for the additional tax, the executors having elected to value the property as of one year from the date of death under Section 811 (j) of the Internal Revenue Code. The tax shown on the return was $180,404.41 and was paid on March 19, 1942. No part of the corpus held by the trustees was included in the gross estate shown on the return. In recomputing the estate tax the Commissioner included in gross estate $1,140,606.30, the fair market value of the entire trust corpus, and accumulated income held by the trustees on December 19, 1940, the agreed date for the purposes of Section 811 (j), Internal Revenue Code, of the distribution of the property to the three beneficiaries. Following the death of the grantor the entire corpus and accumulated income were distributed equally to his three children.

The transfers of the property to the above trust on January 2, 1920, were not made in contemplation of death.

The value, computed on the basis of the mortality table and on the basis of the assumed interest rate prescribed in the Treasury Regulations applicable to federal estate taxes, of the right of a person aged 68 years to receive $1.00 on the date of death of the one last to die of six other persons, aged 44, 36, 34, 10, 4 and 2 years, provided said person aged 68 years would survive all of the six other persons, is .00007384. The probability, computed on the basis of the mortality table prescribed by Treasury Regulations applicable to federal estate taxes, that a person aged 68 years will survive six other persons of the ages of 44, 36, 34, 10, 4 and 2 years is .00015635. The value, computed on the basis of the mortality table and on the basis of the assumed interest rate prescribed

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in the Treasury Regulations applicable to federal estate taxes, of the right of a person aged 47 years to receive $1.00 on the date of the death of the one last to die of three other persons aged 13, 15 and 23 years is .00390. The probability, computed on the basis of the mortality table prescribed in Treasury Regulations applicable to federal estate taxes, that a person aged 47 years will survive three other persons of the ages of 13, 15 and 23 years is .01612.

The petitioners are entitled to a deduction from gross estate of $20,000 for executors' fees allowed by the Probate Court of Cook County and paid.

MEMORANDUM OPINION.

Mernhagen, *Judge*: The decedent had created an irrevocable trust in 1920, the income of which was distributable from that time forth to his children and the corpus was to be distributed to the children when he died. He died in 1940. The Commissioner, citing Internal Revenue Code, Section 811(c), has included the corpus in the decedent's gross estate. We are of opinion that this determination of the Commissioner must be reversed, on the authority of *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339; *Commissioner* v. *Estate of Flora W. Lasker*, 141 Fed. 124 (2d) 889. The decedent in creating the trust retained no "string or tie" amounting to a possibility of reversion, and hence the doctrine of *Helvering* v. *Hallock*, 309 U. S. 106, and numerous decisions deriving from it, are not in point.

Enter: Feb. 24, 1945.

Decision will be entered under Rule 50.

(Seal)

125 THE TAX COURT OF THE UNITED STATES

(Caption—1662)

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION.

(Filed Mar. 26, 1945.)

The attached proposed computation is submitted on behalf of the respondent, to The Tax Court of the United States, in compliance with its opinion determining the issues in this proceeding.

This computation is submitted in accordance with the opinion of the Court, without prejudice to the respondent's right to contest the correctness of the decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

(Signed) J. P. Wenchel
J.D.K.
J. P. Wenchel,
Chief Counsel
Bureau of Internal Revenue

Of Counsel:
John D. Kiley
Division Counsel
Harold H. Hart
Special Attorney
Bureau of Internal Revenue

126 C-TS:CD
AP:AVK

Mar. 6, '45.

STATEMENT

In re: Estate of Sidney M. Spiegel, Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors, 540 North Michigan Avenue, Chicago 11, Illinois.

Docket: #1662.

Date of Death: December 19, 1940.

Estate Tax Liability.

Tax Liability	Tax Assessed	Overassessment
$177,980.46	$180,404.41	$2,423.95
Tax Liability	**Tax Paid**	**Overpayment**
$177,980.46	$180,404.41	$2,423.95

The adjustments shown in the attached schedules have been made in accordance with the opinion of the Tax Court of the United States entered February 24, 1945 for decision under Rule 50.

AVanKnoy/lmg
3-5-45.

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Estate of Sidney M. Spiegel.

Date of Death
December 19, 1940

Schedule 1

Net Estate

	Basic Tax	Additional Tax
Net estate as shown in deficiency notice dated February 16, 1943	$1,992,232.02	$2,052,232.02
As adjusted	831,625.72	891,625.72
Adjustment	$1,160,606.30	$1,160,606.30
Decrease:		
(a) Transfers		$1,140,606.30
(b) Executors' fees		20,000.00
Total decrease		$1,160,606.30

Schedule 2

Explanation of Adjustments.

(a) The value of the corpus of a trust created by the decedent during his lifetime is not included in gross estate under Section 811(c) of the Internal Revenue Code.

(b) Petitioners are allowed a deduction from gross estate of $20,000.00 for executors' fees.

Schedule 3

Computation of Tax.

Net estate for basic tax		$831,625.72
Net estate for additional tax		$891,625.72
Basic Tax:		
Tax on $800,000.00	$ 34,500.00	
Tax at 7% on $31,625.72	2,213.80	
Gross Basic Tax	$36,713.80	
Less: Credit for state inheritance tax paid (80%)	29,371.04	
Net basic tax		$ 7,342.76
Additional Tax:		
Tax on $800,000.00	$164,600.00	
Tax at 29% on $91,625.72	26,571.46	
Gross basic and additional tax	$191,171.46	
Less: Gross basic tax	36,713.80	
Net additional tax		$154,457.66
128 Total basic and additional tax		$161,800.42
Defense tax, 10%		16,180.04
Total tax liability		$177,980.46
Tax assessed March 1942 Page 104, Line 5		180,404.41
Overassessment		$ 2,423.95
Estate tax liability		$177,980.45
Estate tax paid: March 19, 1942		180,404.41
Overpayment, Section 912 of the Internal Revenue Code		$ 2,423.95

No Claim for refund filed.

Deficiency notice dated February 16, 1943.

Petition filed May 14, 1943, within the period of three years from the date of payment of the tax.

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To: THE TAX COURT OF THE UNITED STATES.

(Caption—1662)

(Filed Apr. 2, 1945.)

The computation of the respondent filed with the Court on March 26, 1945 has been examined and found to be in accordance with the determination of the Court as set forth in its report. Petitioner therefore joins with the respondent in praying that the Court enter its decision based upon such computation, reserving however the right to contest the correctness of such decision in the appellate courts as provided by statute.

(s) Harry Thom
231 S. LaSalle Street,
Chicago, Illinois.

130 THE TAX COURT OF THE UNITED STATES.

(Caption—1662)

DECISION.

Pursuant to the Court's Findings of Fact and Memorandum Opinion, entered February 24, 1945, the respondent filed a computation which the petitioner agrees is in accordance with the opinion. It is

Decided that there is an overpayment in estate tax of $2,423.95, which amount was paid within three years before the mailing of the notice of deficiency.

(Signed) J. M. Sternhagen,
Judge.

(Seal)

Entered Apr. 3, 1945.

131 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—1662)

PETITION FOR REVIEW

(Filed Jun 29, 1945)

The Commissioner of Internal Revenue, petitioner on review herein, holding office by virtue of the laws of the United States, hereby petitions the United States Circuit Court of Appeals for the Seventh Circuit to review the decision entered by the Tax Court of the United States on April 3, 1945, ordering and deciding that there is an overpayment in estate tax of $2,423.05. This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code.

The respondents on review, Sidney M. Spiegel, Jr., Katherine J. Spiegel, and Robert Michels, are the duly appointed, qualified and acting executors of the Estate of Sidney M. Spiegel, deceased, who died a resident of Winnetka, Illinois, on December 19, 1940. The estate tax return made for and on behalf of said decedent's estate was filed by the said executors with the Collector of Internal Revenue for the First Collection District of Illinois, which collection district is within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit, wherein this review is sought.

(Sg'd) Samuel O. Clark, Jr.,
Assistant Attorney General.
(Signed) J. P. Wenchel,
C.A.R.
Chief Counsel,
Bureau of Internal Revenue
Attorneys for Petitioner
on Review.

Of Counsel:
John T. Rogers,
Special Attorney
Bureau of Internal Revenue

132 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—1662)

STATEMENT OF POINTS TO BE RELIED UPON.

(Filed Jun 29, 1945.)

Now Comes the Commissioner of Internal Revenue, the petitioner on review herein, by and through his attorneys, Samuel O. Clark, Jr., Assistant Attorney General, and J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

That the Tax Court of the United States erred:

1. In holding and deciding that the transfer in trust made by the decedent on January 2, 1920, was not a transfer intended to take effect in possession or enjoyment at or after the decedent's death within the meaning of Section 811(c) of the Internal Revenue Code.

2. In failing to hold and decide that said transfer of January 2, 1920, was a transfer testamentary in character and was intended to take effect in possession or enjoyment at or after the decedent's death within the meaning of Section 811(c) of the Internal Revenue Code.

3. In that its decision is contrary to the law and the Regulations and is not supported by substantial ev-
133 idence.

4. In ordering and deciding that there is an overpayment in estate tax of $2,423.95.

5. In failing to order and decide that there is a deficiency in estate tax of $454,788.58.

(Sg'd) Samuel O. Clark, Jr.
Assistant Attorney General.
(Signed) J. P. Wenchel,
G. A. R.
Chief Counsel.
Bureau of Internal Revenue.
Attorneys for Petitioner on Review.

134 In the United States Circuit Court of Appeals.

(Caption—1662)

NOTICE OF FILING PETITION FOR REVIEW AND STATEMENT OF POINTS TO BE RELIED UPON.

(Filed Jun 30, 1945.)

To: Harry Thom, Esq.,
231 South LaSalle Street
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 29th day of June, 1945, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled case, together with a statement of points to be relied upon. A copy of the petition for review and a copy of statement of points as filed are hereto attached and served upon you.

Dated this 30th day of June, 1945.

(S) B. D. Gamble,
Clerk,
The Tax Court of the United States.

Service of copy of petition for review and statement of points acknowledged this 2nd day of July 1945.

(S) Harry Thom,
Attorney for Respondent on Review.

135 In the United States Circuit Court of Appeals.

(Caption—1662)

NOTICE OF FILING PETITION FOR REVIEW AND STATEMENT OF POINTS TO BE RELIED UPON.

(Filed July 20, 1945.)

To: Katherine J. Spiegel,
540 North Michigan Avenue,
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 29th day of June, 1945, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled case, together with a statement of points to be relied upon. A copy of the petition for review and a copy of statement of points as filed are hereto attached and served upon you.

Dated this 29th day of June, 1945.

(Signed) Samuel O. Clark, Jr. C.A.R.
Assistant Attorney General.
(Signed) J. P. Wenchel, C.A.R.
Chief Counsel.
Bureau of Internal Revenue.
Attorneys for Petitioner on Review.

Personal service of the above and foregoing notice, together with copies of the petition for review and statement of points mentioned therein, is hereby acknowledged this 3 day of July 1945.

(S) Katherine J. Spiegel,
Respondent on Review.

136 In the United States Circuit Court of Appeals.

(Caption—1662)

NOTICE OF FILING PETITION FOR REVIEW AND STATEMENT OF POINTS TO BE RELIED UPON.

(Filed, July 20, 1945.)

To. Robert Michels,
540 North Michigan Avenue,
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 29th day of June, 1945, file with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled case, together with a statement of points to be relied upon. A copy of the petition for review and a copy of statement of points as filed are hereto attached and served upon you.

Dated this 29th day of June, 1945.

(Signed) Samuel O. Clark, Jr. C.A.R.
Assistant Attorney General.
(Signed) J. P. Wenchel, C.A.R.
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Personal service of the above and foregoing notice, together with copies of the petition for review and statement of points mentioned therein, is hereby acknowledged this 6th day of July, 1945.

Robert Michels,
Respondent on Review.

137 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

(Caption—1662)

DESIGNATION OF PORTIONS OF RECORD, PROCEEDINGS, AND EVIDENCE TO BE CONTAINED IN RECORD ON REVIEW.

(Filed Sep 11, 1945t)

To the Clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Tax Court.

2. Pleadings before the Tax Court:

(a) Petition, together with attached Exhibit A (notice and Statement of Deficiency.)

(b) Answer.

(c) Petitioner's (taxpayer's) motion to amend petition, together with court's order entered thereon.

3. Stipulation of Facts, together with exhibits referred to therein and attached thereto.

4. Transcript of the proceedings before the Tax Court on September 26, 1944.

5. Memorandum Findings of Fact and Opinion of the Tax Court.

6. (a) Respondent's (Commissioner's) computation for entry of decision under Rule 50, together with taxpayer's consent thereto.

(b) Decision of the Tax Court.

138 7. Petition for Review and Statement of Points to be Relied Upon, together with proof of service of notice of filing Petition for Review and of service of a copy of Petition for Review and proof of service of notice of filing Statement of Points and of service of a copy of Statement of Points.

8. Any and all orders made by the Court with respect

to the enlargement of time for the preparation and transmission of the record on review, not included in record.

9. This Designation of Portions of Record, Proceedings, and Evidence to be contained in Record on Review.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Seventh Circuit.

(Sg'd) Samuel O. Clark, Jr., C.A.R.
Assistant Attorney General.
(Signed) J. P. Wenchel, C.A.R.
Chief Counsel,
Bureau of Internal Revenue,
Attorneys for Petitioner on Review.

Service of a copy of the within Designation of Portions of Record, etc., is hereby admitted and agreed to this 21st day of August, 1945.

Harry Thom,
Attorney for Respondent on Review.

139 THE TAX COURT OF THE UNITED STATES

(Caption—1662)

ORDER ENLARGING TIME.

Upon motion of counsel for petitioner, it is Ordered that the time for preparation, transmission and delivery of the record *sur* petition for review of the above-entitled proceeding in the United States Circuit Court of Appeals for the Seventh Circuit is extended to September 26, 1945.

(Signed) Bolon B. Turner,
Presiding Judge.

Dated: Washington, D. C.
July 28, 1945.

Now: Sept. 20, 1945, the foregoing order is certified from the record as a true copy.

(Seal)

B. D. Gamble,
Clerk.

Commissioner of Internal Revenue, *Petitioner*, v. Estate of Sidney M. Spiegel, Dec'd., Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels, Executors Under The Last Will and Testament of Sidney M. Spiegel, Dec'd. *Respondent.*	Docket No. 1662

Certificate.

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 134, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 20th day of September, 1945.

B. D. Gamble,
Clerk,
The Tax Court of the United States.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed and filed on the fourth day of May, 1946, in:

Cause No. 8932.

Commissioner of Internal Revenue,
Petitioner,

vs.

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.,
Respondents,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of February, A. D. 1947.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred and forty-four, and of our Independence the one hundred and sixty-ninth.

Commissioner of Internal Revenue, *Petitioner,* No. 8932 *vs.* Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.

And afterwards, to-wit: On the twenty-eighth day of September, 1945, there was filed in the office of the Clerk of this Court, and appearance of counsel for Respondent, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8932.

Commissioner of Internal Revenue,
Petitioner,

vs.

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.;
Respondents.

The Clerk will enter our appearance as counsel for Respondents.

Paul M. Godehn,
231 S. La Salle Street,
Chicago, Ill.

Harry Thom,
231 S. La Salle Street,
Chicago, Ill.

Mayer, Meyer, Austrian & Platt,
Of Counsel,
State 0600.

Endorsed: Filed September 28, 1945. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eleventh day of May, 1946, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8932.

..... Term, 19.....

Commissioner of Internal Revenue,
Petitioner,

vs.

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.,
Respondents.

The Clerk will enter our appearances as counsel for the Petitioner.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

John T. Rogers,
Special Attorney, Bureau of Internal Revenue.

Endorsed: Filed May 11, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the tenth day of June, 1946, there was filed in the office of the Clerk of this Court, an appearance of counsel for Respondents, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8932.

Commissioner of Internal Revenue,
Petitioner,

vs.

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.,
Respondents.

The Clerk will enter our appearance as counsel for Respondents.

Herbert A. Friedlich,
Louis A. Kohn,
231 South La Salle St.,
Chicago, Ill.

Endorsed: Filed June 10, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eighteenth day of November, 1946, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 8932.

Com. of Int. Revenue,

vs.

Estate of Spiegel, etc.

The Clerk will enter appearance as counsel for Petitioner.

Melva M. Graney.

Endorsed: Filed November 18, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-first day of November, 1946, the following further proceedings were had and entered of record, to-wit:

Thursday, November 21, 1946.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

Commissioner of Internal Revenue, *Petitioner*, vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.
No. 8932	

Now this day this cause comes on to be heard on the transcript of the record and briefs of counsel, and on oral argument by Miss Melva M. Graney, counsel for Petitioner, and by Mr. Herbert A. Friedlich, counsel for Respondents, and the Court now takes this matter under advisement.

And afterwards, to-wit: On the twenty-eighth day of December, 1946, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

No. 8932. October Term and Session, 1946.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*
vs.
ESTATE OF SIDNEY M. SPIEGEL, DECEASED, ET AL., ETC., *Respondents.*

Petition for Review of Decision of the Tax Court of the United States.

December 28, 1946.

Before EVANS, KERNER, and MINTON, *Circuit Judges.*

MINTON, *Circuit Judge.* This is an appeal by the Commissioner of Internal Revenue from a decision of the Tax Court excluding from the provisions of the Estate Tax Law[1] the corpus and certain accumulated income thereon of an *inter vivos* trust executed by one Sidney M. Spiegel. The property conveyed in trust to Spiegel and another as trustees consisted of certain stocks. The trust provisions, as far as material here, are set forth in the margin.[2]

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1. Internal Revenue Code, Sec. 800 *et seq.* (26 U. S. C. 1940 Ed. Sec. 800 *et seq.*).

2. "2. The Trustees, and the survivor of them, and any successor trustee, shall collect and receive all income derived therefrom, or from any substitutes therefor, and shall during the life of myself, said Sidney M. Spiegel, divide said net income into three (3) equal parts, and pay or use one of said parts of said income to or for the maintenance, support and education of each of my three (3) children, Katherine J. Spiegel, Sidney M. Spiegel, Jr., and Julia K. Spiegel,—such income to be distributed at convenient intervals each year. In the event that any of my said three (3) children shall die prior to my death, then the share of such income to which such deceased one of said three (3) children would have been en-

The chief question for us is whether the transfer in trust, executed in 1920, was intended to take effect in possession or enjoyment at or after the grantor's death within the meaning of Sec. 811(e) of the Internal Revenue Code.[3]

If the trust provisions in this case had been made by will, the property would have been taxable. Did the settlor of the trust avoid the incidence of such tax by the execution of an *inter vivos* agreement?

The taxpayer contends that since the beneficiaries took a vested interest as to the corpus by the terms of the trust and had enjoyed the income therefrom during the settlor's life, the latter had completely divested himself of all interest in and to the property comprising the trust, and therefore there was nothing left to be taxed. This, it is claimed, is in accordance with the law of Illinois which the taxpayer contends is controlling. Under the Illinois law, the taxpayer argues, the beneficial interests transferred by this trust were vested and could be divested only by the strict and literal happenings provided in the trust instrument, and in no event could there be any property interest remaining in the settlor, nor could there be any possibility of the property ever reverting to the settlor or his estate,

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titled shall go to the child or children of such deceased child of mine, in equal parts, and if there be no such child or children of any such deceased child of mine, then such income shall be divided equally among the survivors of said three (3) children of mine, and their descendants, per stirpes and for per capita.

"3. Upon my death, the said Trustees, and the survivor of them, or any successor Trustee, shall divide said trust fund, and any accumulated income thereon then in the hands of said Trustees, equally among my said three (3) children, and if any of my said children shall have died, leaving any child or children surviving, then the child or children of such deceased child of mine shall receive the share of said trust fund to which its or their parent would have been entitled, and if any of my said three (3) children shall have died without leaving any child or children him or her surviving, then the share to which such deceased child of mine would have been entitled shall go to my remaining children, and the descendants of any deceased child of mine per stirpes and not per capita."

3. "Sec. 811. Gross Estate.

"The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

* * * * * *

"(c) Transfers in contemplation of, or taking effect at death. To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, * * * except in case of a bona fide sale for an adequate and full consideration in money or money's worth. * * *" (26 U. S. C. 1940 Ed., Sec. 811.)

apart from the possibility that he might take by inheritance from the deceased beneficiaries.

To support this proposition the respondent taxpayer cites certain Illinois cases.[4] These are cases involving property which was disposed of by will. In such cases the rights of the parties vest and are fixed at the death of the testator. There can be no divesting of such rights except as provided in the will. We think it could not be disputed that if there were no takers under the will at the time of the testator's death, the property would be intestate property. *Belleville Bank* v. *Aneshaensel*, 298 Ill. 292, 131 N. E. 682; *Dorsey, et al.* v. *Dodson, et al.*, 203 Ill. 32, 67 N. E. 395.

To have a case analogous to the possible case under the instant trust, you would have to have a situation where all takers were dead at the testator's death. In tax cases, we do not necessarily deal with situations as they are, but with situations *as they may be*. By the express terms of the trust under consideration, the beneficiaries could never take the full possession and enjoyment of the corpus of this trust except upon the condition provided in the trust instrument that some of the beneficiaries survive the settlor. If all of the beneficiaries were dead at the time the settlor died, and that was a possibility, the trust would fail. Thus there was a property interest remaining in the settlor that was terminated only by his death, and this was a sufficient interest for the estate tax to attach, pursuant to Sec. 811(c). We do not think that on the execution of the trust there was such vesting of the interests of the beneficiaries as there would be in the case of a will, which takes effect only as of the death of the testator. The conditions upon which the interests are to vest or not vest are all present at the time a will takes effect—at the death of the testator. But in a trust instrument, the conditions upon which the interests are to vest are not necessarily present at the time the trust instrument is executed. In the instant case the condition upon which the beneficiaries take the corpus is that they survive the settlor.

In considering the taxability of *inter vivos* transfers, we start with *Klein* v. *United States*, 283 U. S. 231, 233,

4. *Welch* v. *Crowe*, 278 Ill. 244, 115 N. E. 859; *Lachenmyer* v. *Gelbach*, 266 Ill. 11, 107 N. E. 202; *Illinois Land & Loan Co.* v. *Bonner*, 75 Ill. 315; *Continental Illinois National Bank & Trust Co.* v. *Kane*, 308 Ill. App. 110, 31 N. E. 2d 351.

234, 51 S. Ct. 398, 75 L. Ed. 996. In that case the grantor had by deed conveyed a life estate to his wife, but if she died before the grantor, the property reverted to him. If the wife survived the grantor, she received the fee. The Commissioner included the property in the estate of the grantor for estate tax purposes, and the administratrix of the grantor's estate paid the tax and sued the United States in the Court of Claims to recover. From a judgment against her, she appealed. The Supreme Court, affirming the Court of Claims, said:

> "It follows that only a life estate immediately was vested. The remainder was retained by the grantor; and whether that ever would become vested in the grantee depended upon the condition precedent that the death of the grantor happen before that of the grantee. The grant of the remainder, therefore, was contingent. * * * The decisions of the Supreme Court of Illinois, the State where the deed was made and the property lies, support this conclusion. *Haward* v. *Peavey*, 128 Ill. 430, 439; 21 N. E. 503; *Baley* v. *Strahan*, 314 Ill. 213, 217; 145 N. E. 359. * * * Nothing is to be gained by multiplying in words in respect of the various niceties of the art of conveyancing or the law of contingent and vested remainders. It is perfectly plain that the death of the grantor was the indispensable and intended event which brought the larger estate into being for the grantee and effected its transmission from the dead to the living, thus satisfying the terms of the taxing act and justifying the tax imposed."

Applying this law to the instant case, we think it follows that the interests under this trust did not vest upon the execution of the trust, as contended by the taxpayer, and could only vest upon the happening of the condition precedent, namely, that the beneficiaries or some of them survive the settlor, and this was the "event which brought the larger estate into being for the" beneficiaries. If none of the beneficiaries survived the settlor, and that was a possibility, then the trust failed, and the trustees would hold the bare naked title to the corpus as resulting trustees for the settlor. *Restatement of the Law of Trusts*, Sec. 411(b); *Bogert, The Law of Trusts and Trustees*, Vol. II, Sec. 468; *Lill* v. *Brant*, 6 Ill. App. 366, 376. This possibility that the property might return to the settlor was sufficient

upon which to fasten the estate tax provisions. That the property might return to the settlor by operation of law rather than by the terms of the instrument is of no significance. *Commissioner of Internal Revenue* v. *Bank of California,* 155 F. 2d 1.

In *Helvering* v. *Hallock,* 309 U. S. 106, 60 S. Ct. 444, 84 L. Ed. 604, all of the several trusts involved contained a provision whereby it was possible that the corpus of the property or a part of it might return to the settlor. In that case, the Supreme Court, upholding the tax on the trusts to the estate of the settlor and affirming *Klein* v. *United States, supra,* and overruling *Becker* v. *St. Louis Trust Company,* 296 U. S. 48, 56 S. Ct. 78, 80 L. Ed. 35, and *Helvering* v. *St. Louis Trust Co.,* 296 U. S. 39, 56 S. Ct. 74, 80 L. Ed. 29, said: (p. 118)

> "The importation of these distinctions and controversies from the law of property into the administration of the estate tax precludes a fair and workable tax system. Essentially the same interests, judged from the point of view of wealth, will be taxable or not, depending upon elusive and subtle casuistries which may have their historic justification but possess no relevance for tax purposes. These unwitty diversities of the law of property derive from medieval concepts as to the necessity of a continuous seisin. Distinctions which originated under a feudal economy when land dominated social relations are peculiarly irrelevant in the application of tax measures now so largely directed toward intangible wealth.
>
> "Our real problem, therefore, is to determine whether we are to adhere to a harmonizing principle in the construction of Sec. 302(c), or whether we are to multiply gossamer distinctions between the present cases and the three earlier ones. Freed from the distinctions introduced by the *St. Louis Trust* cases, the *Klein* case furnishes such a harmonizing principle."

It must always be remembered that we are dealing with a tax law that Congress intended should be uniform in its application, and that the provision we are dealing with was one to be used to close the escape mechanism of gifts *inter vivos* when the same transfer of property if made by will would be taxable. Congress did not intend that the tax liability should depend upon the name given to the piece of paper.

The Supreme Court said at page 112 of the *Hallock* case, *supra*, referring to the *Klein* case:[5]

> "The inescapable rationale of this decision, rendered by a unanimous Court, was that the statute taxes not merely those interests which are deemed to pass at death according to refined technicalities of the law of property. It also taxes *inter vivos* transfers that are too much akin to testamentary dispositions not to be subjected to the same excise."

The Supreme Court has set its face more and more against involvement in the "subtle casuistries" of property law and has looked at the question more as one of "a fair and workable tax system." In two decisions published about the same time as the decision of the Tax Court in the instant case and not mentioned therein, the Supreme Court has given full sweep to the taxing power of Congress and the freest interpretation to Sec. 811 (c) of the Code. In *Commissioner* v. *Field*, 324 U. S. 113, 116, 65 S. Ct. 511, 89 L. Ed. 786, the Court said:

> "The estate tax is not based on the value of the reversionary interest of the decedent at the time of his death but on the value at the time of his death of the property to which that reversionary interest relates. It makes no difference how vested may be the remainder interests in the corpus or how remote or uncertain may be the decedent's reversionary interest. If the corpus does not shed the possibility of reversion until at or after the decedent's death, the value of the entire corpus on the date of death is taxable."

Again in *Fidelity Co.* v. *Rothensies*, 324 U. S. 108, 111, 112, 65 S. Ct. 508, 89 L. Ed. 782, the Supreme Court said:

> "It is fruitless to speculate on the probabilities of the property being distributed under the contingent power of appointment. Indeed, such speculation is irrelevant to the measurement of estate tax liability. The application of this tax does not depend upon 'elusive and subtle casuistries.' *Helvering* v. *Hallock*, *supra*, 118. No more should the measure of the tax depend upon conjectures as to the propinquity or

5. See Stone, Justice, Helvering v. St. Louis Trust Co., 296 U. S. 39, 46, where he is speaking of Section 811(c) and (d): "Both provisions prevent tax evasion by subjecting to the death tax, forms of gifts *inter vivos* which may be resorted to, as a substitute for a will, in making dispositions of property operative at death."

> certainty of the decedent's reversionary interests. It is enough if he retains some contingent interest in the property until his death or thereafter, delaying until then the ripening of full dominion over the property by the beneficiaries."

In the light of these most recent expressions of the Supreme Court, we think it clear that since there was a possibility that all of the beneficiaries might be dead at the settlor's death, there was a possibility of the trust failing and the property returning to the settlor; that this was such an interest in the property as was not wholly divested by the settlor until his death; that this possibility prevented the full and complete possession and enjoyment of the corpus until the settlor's death, and therefore the corpus was within the provisions of Sec. 811(c) of the Revenue Code, and the Commissioner properly included the entire corpus in the taxable estate of Mr. Spiegel.

Counsel for the taxpayer has relied heavily upon *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339, 49 S. Ct. 123, 73 L. Ed. 410. We do not think this case controlling here because as to the five trusts held nontaxable in that case, the Court said at page 346:

> "* * * the trust, for all practical purposes, had passed as completely from any control by decedent which might inure to his own benefit as if the gift had been absolute."

We hold in the instant case that there was a possibility of the corpus of the trust returning to the settlor because of the precedent condition that the beneficiaries or some of them must survive the settlor, and that the corpus had not completely passed from the settlor.

Emphasis is placed by the taxpayer upon the fact that the settlor did not receive the income from the trust but such income was all given to the beneficiaries. That fact may be important in determining whether that segment of the property passed by the trust, but it is not controlling or persuasive as to whether the settlor had completely disposed of the corpus.

The decision of this court in *Commissioner* v. *Lasker*, 141 F. 2d 889, also relied upon by the taxpayer, if still authority in the light of the recent liberal opinions of the Supreme Court, can be distinguished from the instant case

in this respect—there the possibility of reverter was so remote as to be practically non-existent.

It is suggested by the taxpayer that the ruling of the Tax Court that the decedent retained no interest in the property is conclusive. We think the question presented here is a pure question of law, and that the action of the Tax Court being in our opinion erroneous in law is reviewable by us. *Dobson* v. *Commissioner*, 320 U. S. 489, 64 S. Ct. 239, 88 L. Ed. 248.

For such error of law, the judgment of the Tax Court is

REVERSED.

Endorsed: Filed December 28, 1946. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-eighth day of December, 1946, the following further proceedings were had and entered of record, to-wit:

Saturday, December 28, 1946.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

Commissioner of Internal Revenue, *Petitioner*, vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents*	Petition for Review of Decision of The Tax Court of the United States.
No. 8932	

This cause came on to be heard on the transcript of the record from The Tax Court of the United States, and was argued by counsel.

On consideration whereof, It is ordered and adjudged by this Court that the Decision of The Tax Court of the United States entered in this cause on April 3, 1945, be, and the same is hereby, reversed.

And afterwards, to-wit: On the eleventh day of January, 1947, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said Petition for Rehearing is in the words and figures following, to-wit:

IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 8932

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* *vs.* ESTATE OF SIDNEY M. SPIEGEL, DECEASED, et al., etc., *Respondents.*	Petition for Review of Decision of the Tax Court of the United States.

PETITION OF RESPONDENTS FOR REHEARING.

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IN THE

United States Circuit Court of Appeals

FOR THE SEVENTH CIRCUIT.

No. 8932

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* vs. ESTATE OF SIDNEY M. SPIEGEL, DECEASED, et al., etc., *Respondents.*	Petition for Review of Decision of the Tax Court of the United States.

PETITION OF RESPONDENTS FOR REHEARING.

To the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now come Respondents, by Herbert A. Friedlich, Harry Thom and Louis A. Kohn, their attorneys, and file this Petition for a Rehearing in the above entitled cause, and pray that a rehearing may be granted for the following reasons:

1. The Court erred in holding that there should be included in the taxable gross estate of Sidney M. Spiegel, deceased, property in which the decedent had no interest whatsoever at the date of his death.

2. The Court erred in holding that Spiegel had a possibility of reverter in the trust property by operation of law whereas, under applicable and governing Illinois decisions, it was impossible for the property to revert to him.

Introductory Statement.

The Court found that the remainders in the case at bar were contingent, and that, therefore, if the settlor had survived all beneficiaries, the trust would have failed and the property would revert to the settlor by operation of law. In determining that the remainders were contingent, the Court disregarded the well settled and governing Illinois law, *as well as the admission of the Government*, that the remainders were vested. As the remainders were vested, the trust could not fail, and the property could not revert to the settlor, under any condition.

The Spiegel remainders vested in interest at the inception of the trust in 1920. This cannot be questioned under the Illinois decisions and the Government cited no authorities whatsoever on this point. If, however, the Court had any doubt, it should have been entirely dissipated by the express admission of the Government, at the oral argument, that the remainders were vested.[1]

The Court, nevertheless, refused to follow Illinois decisions as to vested remainders under testamentary trusts, cited by Respondents, because, in its opinion, decisions involving testamentary trusts are not applicable to *inter vivos* trusts. The Court refused to follow the cited authorities, although there can be no question in Illinois that rules of construction with respect to vesting of testamentary remainders are equally applicable in determin-

1. It is submitted that, in any event, the Court should modify its opinion, heretofore rendered, so as to state therein that the Government made the aforesaid admission in order that the record, which may go to the Supreme Court upon application for a *writ of certiorari*, will disclose such admission.

ing the vesting of *inter vivos* remainders. In fairness to the Court, however, it should be stated that no cases on the precise point were cited in Respondents' original Brief.

Having discarded all of the Illinois authorities on vesting, cited by Respondents (and the Government cited none), because of the Court's erroneous conclusion that they are not applicable to *inter vivos* trusts, the Court, further (unintentionally, we assume) ignored the unequivocal admission of the Government that the remainders were vested.

A determination as to whether the settlor retained any interest in the trust property is governed by the property laws of Illinois and, under those laws, requires a further determination whether the remainders were vested or contingent. As there was no express provision for any reverter to Spiegel, the property could not possibly have come back to him under the terms of the trust. If the remainders were (and they clearly were) vested, the trust could not fail. There can be no failure of a trust containing a vested remainder because, by definition, there will always be a beneficiary (or the heirs or legatees of a beneficiary or the State upon escheat) ready to take possession of a vested remainder, whenever and however the preceding estate terminates. Accordingly, the trust property could not have reverted to the settlor by operation of law on the theory that there might have been no one else to take.

We submit that, upon a re-examination of the cited authorities, together with the additional authorities cited in this Petition for Rehearing, the Court should conclude that the remainders were vested, and that, accordingly, Spiegel, the decedent, did not have, and could not possibly have had, any interest in the trust property at the date of

his death, and therefore that his estate is not liable for estate taxes on account of such trust property.[2]

In view of the unwarranted construction placed upon the instrument in question by the Court, with the resulting large tax liability,[3] we feel that, in the interests of justice, we owe it not only to the client, but also to the Court, to discuss fully the fundamental rules of law involved and to point out the Court's misapprehension of the nature of the interests created. We, therefore, beg the Court's indulgence in considering this lengthy Petition.

Detailed Statement of the Grounds and Reasons for Rehearing.

Respondents submit that it is clear that, under the law of Illinois, the trust instrument (set out in footnote 2 to the Court's opinion) absolutely divested the settlor-decedent of any possible interest in the trust estate from and after the creation of the trust in 1920, and that, even if all of the three named children of the settlor had died prior to the death of the settlor, leaving no descendants them surviving, the settlor could not have taken any interest in the trust property by operation of law or other-

2. In *Central Hanover Bank and Trust Company* v. *U. S.*, 57 F. Supp. 497 (1944), the Court of Claims, in a similar situation involving an *inter vivos* trust, assumed that, if the children of the settlor-decedent died without issue before the settlor's death, the trust would fail and the property would revert to the settlor and, therefore, held the trust property includable as part of the settlor's gross estate. On taxpayer's motion for a new trial (58 F. Supp. 565 (1945)), the court considered New York decisions to the effect that the trust property "would have vested absolutely in the last surviving 'remainderman' even if he had died before the settlor, or that it would have been divided equally between the estates of the three remaindermen even if all had predeceased the settlor". The court clearly indicated that, if the New York law was to the above effect, it would have excluded the value of the remainders from the decedent's gross estate. The Court granted a new trial and held for the taxpayer, even though there might be doubt as to the New York law, inasmuch as the decedent undoubtedly considered the law to be as above stated and, therefore, did not intend to retain any interest in the trust property.

3. The principal amount involved, together with interest thereon, is in excess of $500,000.

wise. The trust property would have passed, in such event, under the wills or as intestate property, of the three named children of the settlor, and its transfer would, in such event, have been subject to payment of estate taxes by the estates of the settlor's children. If the settlor acquired any of the trust property, it could have been only as a legatee or as the next of kin of one of his children and not by reason of any failure to divest himself of all of the property included in the trust.

Under the law of Illinois, the remainders, given to the three named children, were vested remainders from the inception of the trust in 1920, subject, however, to subsequent divestment by executory limitations over, if, and only if, the contingencies provided in the trust occurred. The divestment, expressly provided for in the trust, was in favor of children of a deceased named child of the settlor, of other named children of the settlor, or of descendants of other named children of the settlor, and could only operate in the event that a child of a deceased named child, another named child or a descendant of one of the named children was alive upon the death of the settlor. The settlor was given no right of reverter by the terms of the instrument.

If none of the specified persons, in whose favor the condition subsequent ran, were alive at the settlor's death, then there would be no divestment and the respective vested remainders in the three named children would pass under their wills or as their intestate property. This would unquestionably have been the effect of the application of the laws of Illinois to the trust before the Court with the result that the controlling Illinois law would not operate to bring about the reverter of any interest in the property to the settlor under any condition.

Since the settlor had no interest whatsoever in the trust

property after 1920, his estate could not be taxable on account of the property.

I.

The Remainders to the Three Named Children of the Settlor Were Vested Remainders Under Illinois Law.

The applicable Illinois decisions, of which *Lachenmyer v. Gehlbach*, 266 Ill. 11, is typical, as well as other authorities demonstrating that the remainders in question were vested from the date the trust was established, are set out on pages 11 through 15 of Respondents' Brief.

Government Admits Remainders Were Vested.

The Illinois authorities, to the effect that these remainders were vested, are so clear that counsel for the Government cited no authorities on the point and, at the oral argument before this Court, unequivocally admitted that the remainders were vested. The Court has either overlooked or disregarded this admission.

Authorities Respecting Vested Remainders Under Wills Are Controlling Authorities With Respect to Remainders Under Inter Vivos Trusts.

The Court, in its opinion, comments upon the Illinois authorities, cited by Respondents with respect to vesting, as follows (p. 3):

> "To support this proposition the respondent taxpayer cites certain Illinois cases. These are cases involving property which was disposed of by will. In such cases the rights of the parties vest and are fixed at the death of the testator. There can be no divesting of such rights except as provided in the will. We think it could not be disputed that if there were

> no takers under a will at the time of the testator's death, the property would be intestate property. * * *"

Thus, this Court declines to hold the remainders vested, on the ground that the authorities cited by Respondents involved wills. However, authorities with respect to vesting of remainders under trusts created by will are clearly relevant with respect to vesting of remainders under *inter vivos* trusts. This is evident from a study of the opinion in *Klein* v. *United States*, 283 U. S. 231, where the Supreme Court supports its finding that the remainder, there involved, was contingent by citing Illinois cases. Each of the cases so cited (283 U. S. at p. 234) is a case involving a testamentary trust, whereas the *Klein* case dealt with an *inter vivos* conveyance.

Illinois courts have conclusively rejected the contention that authorities with respect to vesting of remainders in connection with testamentary trusts are not binding on the question of vesting of remainders under *inter vivos* instruments. In *Harder* v. *Matthews*, 309 Ill. 548 (1923), the court had occasion to determine whether a remainder, set up by an *inter vivos* deed, was vested or contingent and stated that the Illinois rule as to vested remainders was laid down in *Lachenmyer* v. *Gehlbach*, 266 Ill. 11, cited on page 11 *et seq.* of Respondents' Brief. As the *Lachenmyer* decision involved a trust under a will, it was argued that the *Lachenmyer* decision was not applicable to a remainder created by *inter vivos* indenture. The court held to the contrary, saying (p. 566):

> "The question usually arises in the construction of wills, because executory devises are more common than executory limitations in deeds. All the cases which have been cited are cases of wills, but in *Ames* v. *Smith*, 284 Ill. 63, the limitation was contained in a deed reserving a life estate to the grantor, conveying the remainder in fee simple to the grantor's sons,

with an alternative gift over in case of the death of either of the sons without a child or wife surviving him, or leaving a wife or child surviving, or a wife and child or children. The grantor having died and the sons survived, the rule in regard to the gift over of a future interest to take effect upon the termination of a particular estate announced in *Lachenmyer v. Gehlbach, supra,* was quoted and followed and the sons were held to be vested with the title in fee simple. * * *

(p. 568) "It is said that in this case the rule in question, which was formulated to aid in the construction of wills, is sought to be applied to a deed. As has been said already, the necessity for construction of the language in question arises more frequently in cases of wills, *but the rule is as applicable to the comparatively few cases involving a deed as to those of wills.* It was applied in *Ames* v. *Smith, supra,* to a deed, and its application in the case of a deed was recognized in *Cutler* v. *Garber, supra,* though that case was held to be excluded from its operation by the language of the deed there involved, which clearly referred the contingency to a time later than the expiration of the particular estate." (Italics ours.)

In *Smith* v. *Dugger,* 310 Ill. 624 (1924), the court again considered an *inter vivos* deed and said (p. 626):

"In this case the remainder conveyed to the grantor's three sons vested in interest but not in possession, for it was preceded by a life estate in the grantor and falls within the rule announced in *Lachenmyer v. Gehlback,* 266 Ill. 11 * * *. That rule has been approved in numerous subsequent decisions. On this question this case cannot be distinguished from *Harder* v. *Matthews,* 309 Ill. 548, where the rule above quoted was discussed and all the cases referred to in which that rule was involved. The *Harder case* was a conveyance by deed reserving a life estate to the grantor of a fee to the grantee, with limitation over that if she died without leaving a child or descendant of a child the land was to go to the grantor's living grand-

children. * * * There is no language in the deed to take this case out of the rule of construction sustained in the *Harder case* and the cases cited in the opinion, and *it was held in that case the rule applies to a conveyance by deed the same as to a devise by will.* * * *" (Italics ours.)

See, *Hamlyn* v. *Hamlyn*, 7 N. E. (2d) 644, 646 (App. Ct. Ind., 1937) and *Belvin's Executor* v. *Belvin*, 189 S. E. 315, 318 (Va., 1937) to the same effect.

The English rule is the same. In *In re Friend's Settlement* (*Cole* v. *Allcot*), [1906] 1 Ch. 47, the court, in rejecting the contention that rules of construction of testamentary trusts are different from those applicable to *inter vivos* trusts, said (p. 52):

"This question arises on the construction of a deed, but *the authorities shew conclusively that the same principles apply in construing a deed and in construing a will.* * * * [Then quoting Lord Broughan in *Cole* v. *Sewell*, 2 H. L. C. 186, 236] 'My Lords, *there never was a greater fallacy, and I think I must take this opportunity of reprehending the fallacy, of saying that we are not to construe a settlement or any other instrument inter vivos in the same way as we should construe a will, but that we are to adopt a totally different rule of construction in the two cases;* in other words, that we are to attend to the intention in the case of a will, and not to care for the intention in the case of a settlement.' *In the present case, therefore, I regard this point in exactly the same way as I should were I construing a will.*" (Italics ours.)

Illinois Law Governs.

In the determination of Federal tax liability, the question as to whether remainders under a trust, created by a resident of Illinois, with trustees who are Illinois residents, and executed and delivered in Illinois, are vested,

must, of course, be decided in accordance with Illinois law. Thus in *Blair* v. *Commissioner*, 300 U. S. 5, the Supreme Court said (p. 9):

> "The question of the validity of the assignments is a question of local law. The donor was a resident of Illinois and his disposition of the property in that State was subject to its law. By that law the character of the trust, *the nature and extent of the interest of the beneficiary*, and the power of the beneficiary to assign that interest in whole or in part, are to be determined. The decision of the state court upon these questions is final. *Spindle* v. *Shreve*, 111 U. S. 542, 547, 548; *Uterhart* v. *United States*, 240 U. S. 598, 603; *Poe* v. *Seaborn*, 282 U. S. 101, 110; *Freuler* v. *Helvering*, *supra*, p. 45." (Italics ours.)

This court has, likewise, recognized that questions of Illinois property rights must be determined in accordance with Illinois law. See, *Carter Oil Co.* v. *McQuigg*, 112 F. (2d) 275, 279 (C. C. A. 7th, 1940).

The Remainders Vested in Interest in 1920.

The Spiegel remainders became vested in interest immediately upon the execution and delivery of the trust instrument in 1920, even though they could not vest in possession until the death of the settlor.

It must be kept in mind that the term "vesting", with reference to remainders, has two different meanings, namely, (i) vesting in interest, which can be either at or after the creation of a trust and (ii) vesting in possession, which must always be after the trust is set up since, by definition, a remainder comes into the remainderman's possession only upon termination of a prior estate. Thus, in *Hickox* v. *Klaholt*, 291 Ill. 544 (1920), the court said (p. 548):

> "It has uniformly been held by this court that when

ever there is one in being capable of taking the remainder at the termination of a life estate, the remainder is *vested in interest* although it must wait the termination of the life estate before it can *vest in possession.* (*Voris* v. *Sloan*, 68 Ill. 588; *Butler* v. *Huestis*, id. 594; *Frazer* v. *Supervisors of Peoria County*, 74 id. 282; *Lehndorf* v. *Cope*, 122 id. 317; *Welliver* v. *Jones*, 166 id. 80; *Moore* v. *Reddel*, 259 id. 36.)" (Italics ours.)

This Court has recognized that vested remainders vest in interest upon the effective date of the instrument creating them although possession of the trust property may not be taken until some subsequent date. In an income tax case, *Molter* v. *Commissioner*, 69 F. (2d) 7, (C. C. A. 7th, 1934), this Court held that certain Illinois remainders were vested, stating (p. 9):

> "The Commissioner asserted deficiencies upon the theory that petitioner took a vested remainder in her father's estate, and based the gain upon the value of the property on the date of her father's death. The Board of Tax Appeals subsequently upheld the deficiencies as asserted by the Commissioner. • • •
>
> "It is obvious that a remainder without condition precedent can not take effect in possession and enjoyment until the death of the life tenant, or other determination of a particular estate, but that *it does take effect in interest and right immediately on the death of the testator* is a rule which, so far as we know, is not denied in American jurisprudence and is strictly followed in Illinois. *Scofield* v. *Olcott*, 120 Ill. 362, 11 N. E. 351; *Ducker* v. *Burnham*, 146 Ill. 9, 34 N. E. 558, 37 Am. St. Rep. 135. • • •." (Italics ours.)

See also, *Hopkins* v. *Commissioner*, 69 F. (2d) 11, 12 (C. C. A. 7th, 1934) (*Certiorari* denied 293 U. S. 560).

The mere fact that possession of the property cannot be obtained by the remaindermen until the death of the settlor does not make the remainders taxable as property of

the settlor-decedent. Estate Tax Regulations 105 provide (in Section 81.17 with reference to transfers intended to take effect in possession or enjoyment at or after death) that the value of property, transferred by *inter vivos* trust, is not to be included in the gross estate of the settlor-decedent unless *both*

> "(1) possession or enjoyment of the transferred interest can be obtained only by beneficiaries who must survive the decedent, *and*
> (2) the decedent or his estate possesses any right or interest in the property (whether arising by the express terms of the instrument of transfer or otherwise)."

The settlor in the Spiegel trust possessed no right or interest in the property, either by the express terms of the trust instrument or otherwise, as we shall show hereinafter.

A Will Speaks From Date of Death. An Inter Vivos Trust Speaks From Its Delivery. A Testamentary Remainder Cannot Vest Before the Settlor's Death. An Inter Vivos Remainder May Vest Upon Delivery of the Trust.

In its opinion the Court says (p. 3):

> "To have a case analogous to the possible case under the instant trust, you would have to have a situation where all takers were dead at the testator's death. • • • We do not think that on the execution of the trust there was such vesting of the interests of the beneficiaries as there would be in the case of a will, which takes effect only as of the death of the testator."

As a will is an ambulatory instrument and speaks only from the death of the testator, vested remainders under testamentary trusts can not vest prior to the date of death of the testator; the date of death is the first moment at which they can vest. An *inter vivos* trust, however, takes

effect from the date of its delivery, and remainders thereunder may vest at that time. Under Illinois law, the remainders under the Spiegel trust vested immediately upon creation of the trust.

We submit that a testamentary trust, all beneficiaries of which are dead at the date of death of the testator, would not be analogous to the instant situation where all named beneficiaries were alive and took vested interests at the trust's inception in 1920, subject to being divested under a certain specified condition subsequent and under such condition only. The interests of the beneficiaries under the Spiegel trust, having vested upon the delivery of the trust, are analogous to interests of beneficiaries under a testamentary trust, who *survive* the testator and take vested remainders upon his death. If all of the named beneficiaries, designated under the Spiegel trust, had died after the trust had been set up and before the settlor's death, their situation would be like that of beneficiaries, who take vested remainders under a testamentary trust at the death of the testator but die prior to the termination of a preceding life estate.

No *inter vivos* trust would, as a practical matter, be set up for the benefit of remaindermen who are dead at the inception of the trust. A testamentary trust, however, may name beneficiaries who are dead at the death of the settlor; this can happen since a will is drawn before death to speak, not as of the date of its execution as in the case of an *inter vivos* trust, but as of the date of death of the testator who cannot know which beneficiaries will be alive when he dies.

The Klein Case Is Not Applicable.

Notwithstanding the Illinois decisions and the Government's admission, this Court in its opinion held (p. 4):

> "* * * that the interests under this trust did not vest upon the execution of the trust, as contended by the taxpayer, and could only vest upon the happening of the condition precedent, namely, that the beneficiaries or some of them survive the settlor. * * *"

This portion of the Court's opinion appears to be based partly upon *Klein v. United States*, 283 U. S. 231, 233, 234, and partly upon this Court's erroneous conclusion, hereinbefore discussed, that the authorities, cited by Respondents in their Brief, involved trusts created under wills and not *inter vivos* and were therefore inapplicable.

The remainder to Klein's wife, which was the subject of the *Klein* case, was clearly a contingent remainder if it was, in fact, a remainder at all, which is doubtful. The Supreme Court there said (p. 233):

> "* * * The life estate is granted with an express reservation of the fee, which is to 'remain vested in said grantor' in the event that the grantee 'shall die prior to the decease of said grantor'. * * * It follows that only a life estate immediately was vested. The remainder was retained by the grantor; and whether that ever would become vested in the grantee depended upon the condition precedent that the death of the grantor happen *before* that of the grantee. The grant of the remainder, therefore was contingent. * * * The decisions of the Supreme Court of Illinois, the state where the deed was made and the property lies, support this conclusion. * * *"

A comparison of the Klein deed with the Spiegel trust makes it apparent that (1) the Klein "remainder" was *retained* by Klein, while the Spiegel remainders were

conveyed by the settlor, and (ii) the rights of Klein's wife came into being only if a condition *precedent* occurred to take the property away from Klein, whereas the Spiegel children immediately took interests which could only be divested by a condition *subsequent* which could not possibly operate in Spiegel's favor. There was no conveyance of any interest to Klein's wife at the time of delivery of the deed except a conditional right to take the remainder in the event that she survived her husband. Immediately prior to Klein's death, he held the "remainder" interest, which could not vest (either in interest or possession) in his wife except at his death. At best, the interest of the wife, upon the delivery of the conveyance, was a contingent remainder. In the case at bar, however, the remainders to the three named children vested, under Illinois authorities, immediately upon the delivery of the trust.[4]

It seems indisputable that the remainder interests of the three named children of the settlor, Spiegel, were vested remainders. The Government has admitted that they were vested remainders. Yet this Court's opinion finds that those remainders were contingent.

As the remainders vested in 1920 and could not be divested, under any conditions, in favor of the settlor, the settlor, after 1920, has no reverter or other interest in the trust property.

4. The instant trust, after gifts of income during settlor's life, provided that

> "Upon my death, the said Trustees * * * shall divide the said trust fund * * * equally among my said three (3) children, and if any of my said children shall have died, leaving any child or children surviving, then the child or children of such deceased child of mine shall receive the share of said trust fund to which its or their parent would have been entitled. * * *".

and made other provision for divesting the remainders in case there were no children of deceased children then living.

II.

A Vested Remainder Passes, Upon the Death of the Remainderman, Either Under His Will or as His Intestate Property and Does Not Revert to the Settlor or Grantor.

The court, in its opinion, states that (p. 4):

> "If none of the beneficiaries survived the settlor, and that was a possibility, then the trust failed, and the trustees would hold the bare naked title to the corpus as resulting trustees for the settlor. *Restatement of the Law of Trusts*, Sec. 411(b); *Bogert, The Law of Trusts and Trustees*, Vol. II, Sec. 468; *Lill v. Brant*, 6 Ill. App. 366, 376."

We submit that this statement of the law is not correct as applied to the case at bar. As the remainders in the instant case were vested, the trust could not have failed even if all the beneficiaries had predeceased the settlor.

A vested remainder, by definition, is a present property right which stands ready at all times to take effect in possession whenever and however the preceding right comes to an end. If the named remaindermen are not in existence when the preceding estate terminates, their heirs, next of kin, legatees, or devisees take. If such persons are not able to take, the remainder escheats to the State. That the remainders, though vested, may be subsequently divested does not alter this result. See, *Kales*, Estates, Future Interests and Illegal Conditions and Restraints in Illinois, 2d Ed., Secs. 93, 94, 327; Gray, The Rule Against Perpetuities, 4th Ed., Sec. 101. In no event can property conveyed as a vested remainder revert to the settlor in the absence of an express provision to that effect.

This fundamental rule of law is applicable to the situation, referred to in the opinion of this Court, which would have existed had all the named beneficiaries predeceased

Spiegel. Moreover, this statement of the law is supported by the same section of the Restatement of the Law of Trusts which the Court has cited.[5] Thus Comment *i* of § 411 of the Restatement states that, in the case of a vested remainder in trust, if the beneficiary dies intestate without heirs or next of kin, the property passes to the State. On the other hand, the Restatement says, in § 411 (*l*), that: "If, however, the interest of the beneficiary in remainder is contingent, and he dies intestate without heir or next of kin before it is vested, a resulting trust arises in favor of the settlor or his estate." § 411 (b) of the Restatement, cited by the Court, merely states that if a trust fails a resulting trust arises; it does not discuss the conditions under which a trust will fail.

Upon the death of a named child of the settlor, Spiegel, prior to the death of the settlor, his vested remainder under the trust would pass under the will of the deceased named child or descend to his next of kin as intestate property. While it is true that the vested interest would, prior to the termination of the preceding estate, be subject to divestment if the exact divesting conditions subsequent should occur, it would, nevertheless, remain a vested interest in the original remainderman's legatees or next of kin until so divested. The interest could not pass to the settlor in the absence of an express provision in the trust instrument to that effect. See discussion and authorities under Point III, *infra*.

In *Smith* v. *West*, 103 Ill. 332 (1882), Allan delivered a deed to Mrs. West under which it was claimed that re-

5. The other authorities cited in this portion of the opinion are not in point. Bogert, The Law of Trusts and Trustees, Vol. II, Sec. 468, states what happens when a trust fails, but as shown above, the Spiegel trust could not fail. *Lill* v. *Brant*, 6 Ill. App. 366, 376 (reversed, 98 Ill. 608), merely covers the situation where surplus property remains after completion of the purposes of a limited and special trust set up to protect a creditor. The Spiegel trust has no such limited or special purposes.

remaindermen, following a life estate granted to Mrs. West, took only contingent interests. The court held that the remainders were vested, saying (p. 337):

"It is urged that Allan's deed to Mrs. West only having conveyed a life estate to her, and a remainder to the children of her body, or such as might be living at her death, or the descendants of any one that might be then deceased, the fee remained in him or his heirs until her death, and the fee would not vest in the remainder-man until the life estate should be expended, and hence the remainder was contingent. We do not so understand the rule. We understand it, that when a conveyance of the particular estate is made to support a remainder over, the tenant for the particular estate takes it, and if the remainder-man is in being, he takes the fee. *In such a case the remainder is not contingent as to its becoming a vested remainder, because the title vests in the remainder-man on the delivery of the deed. The title thus vested becomes an estate of inheritance, and in case the remainder-man dies before the previous estate is expended, the title passes to his heirs, unless the deed directs otherwise.*

• • •

(p. 339) "In this case, under all of the conditions of the rule, the remainder passed from and vested in the children of Mrs. West. They were then in being, were ascertained and designated as the remainder-men, and were capable of, and did take, a vested remainder, and as has been seen, *their death before their mother, without issue, would not prevent or defeat the vested remainder,—it would in such a case descend to their heirs.* But whatever may become of the estate in the future, we have no doubt it vested in the children of Mrs. West when the deed was delivered. *It then follows that Allan had parted with all of his title by conveying the land, and was not incompetent as a witness, because he held no title to or an interest in the land.*" (Italics ours.)

In *Baley* v. *Strahan*, 314 Ill. 213 (1924), cited in *Klein* v. *United States*, 283 U.S. 231, 234, Strahan willed a

life estate to his wife with remainder to his daughter Margaret, but if Margaret predeceased the wife, the remainder was to go to John, a son of the testator. As to alienability of Margaret's remainder during the lifetime of the wife, the court said (p. 215):

"The question at issue is whether Margaret E. Strahan had any alienable interest in the property at the time of her conveyance to her brother John H. Strahan. Appellant contends that by the will Margaret E. Strahan took only a contingent remainder, while the appellee John H. Strahan insists that the remainder was vested, the possession only being postponed, and that Margaret E. Strahan's interest was subject to divestiture in the event that she died before her mother.

(p. 218) "* * * The widow was the life tenant. Her death was certain to occur; the time of her death, only, was uncertain. Margaret, the person to whom the remainder was devised, was ascertained. She survived the widow and the life estate terminated. *Had her death occurred prior to the termination of the particular estate it would not have made the remainder contingent.* It is not the uncertainty of the actual enjoyment of the estate which renders a remainder contingent; it is the uncertainty of the right to the estate which makes it so. * * *

(p. 219) "*The remainder was not devised to Margaret upon the contingency that she survive her mother, but on the theory that her death before that of her mother constituted a condition subsequent, on the happening of which the estate already vested in her was to be divested* and pass to and become the property of her brother John. * * *

(p. 220) "Here *the interest vested in Margaret could be conveyed*, while if there were only a contingent interest there would be nothing alienable. *Kenwood Trust Co.* v. *Palmer*, 285 Ill. 552; *Friedman* v. *Friedman*, 283 id. 383; *DuBois* v. *Judy*, 291 id. 340." (Italics ours.)

Discussing *Commissioner* v. *Estate of Bayne*, 155 F.

(2d) 475 (C. C. A. 2d, 1946), cited by the Government on p. 18 of its brief, Commerce Clearing House-Federal Estate and Gift Tax Reporter states (para. 3430, p. 1553.3) that:

> "The *Bayne* case indicates that a remainder over to the decedent's next of kin is effective [to obviate a reverter to the settlor]. From this it would seem that provisions for remainders over to 'those who would take if I died intestate' or to my 'heirs-at-law' should also be effective where the remainders are contingent. Provision for remainders over to next of kin of the contingent remaindermen would probably be effective also. *If the remainders are vested, there may be no need for such provisions since then the decedent may receive back the property only by taking as an heir of the remainderman* and under a transfer taxable in the estate of the remainderman. He would not be taking by virtue of a failure of beneficiaries. This subject must be watched closely, however, in view of the zeal with which the Commissioner has been pursuing the problem and the fact that so many of the findings of the courts have been unpredictable." (Italics ours.)

A vested remainder can be alienated during the lifetime of the remainderman, can be transferred by his will, and will descend to his heirs or next of kin as his intestate property. It cannot, however, go back or revert (in the absence of an express provision for such a reverter in the trust instrument) to the settlor of the trust. A settlor could, of course, again become the owner of the vested remainder interest by voluntary conveyance from the remainderman or as a legatee of the remainderman or as an heir of the remainderman. In each such case, however, he would recover the remainder, not by reason of any reverter, "string" or interest retained in the property at the time of the creation of the trust, but through and from the *remainderman* himself.

When Spiegel delivered the instant trust instrument in 1920, he effectively transferred all of his interest in the trust property, and *under no contingency whatsoever* could any interest in the property transferred under the trust have reverted to him.

III.

Under the Law of Illinois a Vested Remainder Subject to Divestment Upon Occurrence of a Condition Subsequent Will Be Divested Only If Events Occur Exactly as Specified. The Vested Remainders Could Never Be Divested in Spiegel's Favor.

Immediately upon the death of a named child of Spiegel (a vested remainderman) before Spiegel's death, such child's vested interest would pass to his next of kin or legatees. See discussion and authorities under Point II, *supra*. Such next of kin or legatees would retain such interest until and unless, upon Spiegel's death, the interest was divested by the occurrence of the exact conditions specified in the divesting condition subsequent.

If a named child of Spiegel had died before Spiegel, then, upon Spiegel's death, the child's vested interest would pursuant to the condition subsequent have passed to his children, if any survived, or, if not, to the other surviving named children (other vested remaindermen), or, if there were no other surviving named children, to the surviving descendants of the other named children. The deceased named child's interest could, under no contingency, revert to or revest in Spiegel.

Assuming, however, that there were no living children of such deceased named child, and no other named children of Spiegel or descendants of such other named chil-

dren, who survived to take possession of the vested remainders upon Spiegel's death, the divesting condition subsequent would not operate as there would be no one living, who could take under the terms of the condition subsequent. In such event, the next of kin or legatees of the named children or (if the interest had escheated upon a named child's death) the State would receive possession of the trust property. See, *Continental Illinois National Bank & Trust Co.* v. *Kane*, 308 Ill. App. 110 (1941) and other authorities cited in Respondents' Brief, pages 15 to 23.

In addition to cases cited in Respondents' Brief, the rule that a condition for divesting a vested remainder will not operate to divest, except where the specified contingency takes place literally, is laid down in *McFarland* v. *McFarland*, 177 Ill. 208 (1898) where the court said (p. 217):

> "When a devise is subject to be divested upon the happening of a certain specified contingency, courts will not accept another contingency as the equivalent of that named by the testator, but will only divest the estate when the contingency takes place literally. *Illinois Land and Loan Co.* v. *Bonner*, 75 Ill. 315."

Again, the Illinois Supreme Court recognized this rule in *Henderson* v. *Harness*, 176 Ill. 302 (1898), where it is said (p. 309):

> "The estate having vested in the first taker under this devise, it cannot be divested except on the contingency happening literally in accordance with the instrument creating the estate of the first taker. Roper on Legacies, 619; *Illinois Land and Loan Co.* v. *Bonner*, 75 Ill. 315."

Thus, under no circumstances would divestment of the remainder interests result in the retention of any interest by settlor in the trust property.

IV.

As Spiegel's Interest in the Trust Property, Before and At His Death, Was Nil, Such Property Can Not Be Included in the Value of His Gross Estate.

It is well settled that Federal estate taxes are imposed upon the transmission of property from a decedent to living persons at the date of death, and are therefore unlike succession taxes which are imposed upon the right of a beneficiary to receive property from a decedent, measured by the value of such property. As stated in *YMCA* v. *Davis*, 264 U. S. 47, with reference to the Federal estate tax (p. 50):

> "* * * What was being imposed here was an excise upon the transfer of an estate upon death of the owner. It was not a tax upon succession and receipt of benefits under the law or the will. It was death duties as distinguished from a legacy or succession tax. What this law taxes is not the interest to which the legatees and devisees succeed to on death, but the interest which ceased by reason of the death."

See also, *Chase National Bank* v. *U. S.*, 278 U. S. 327, 336; *Reinecke* v. *Northern Trust Company*, 278 U. S. 339, 347; *Ithaca Trust Co.* v. *U. S.*, 279 U. S. 151, 155; *Edwards* v. *Slocum*, 264 U. S. 61, 62; and *Nichols* v. *Coolidge*, 274 U. S. 531, 541.

It follows, therefore, that no tax significance should be attached to the rights of the various beneficiaries named in the trust agreement, as between themselves, upon the death of a settlor or to possible shifting of interests at that time among the group of beneficiaries. As far as Spiegel was concerned, his conveyance was complete and irrevocable in 1920. No interest, therefore, passed from him upon his death and there is nothing upon which an estate tax can be predicated.

No decision of the Federal courts, which has construed the estate tax law, holds that there should be included in a decedent's gross estate for tax purposes (in the absence of a gift in contemplation of death) any property in which he held, at the date of his death, *no* interest or control, or in connection with which he had *no* possibility, at the date of his death, of recovering back any interest.

Helvering v. Hallock and Related Cases Are Not Applicable to the Trust Before the Court.

A great deal of confusion, however, has arisen from statements of the Supreme Court in *Helvering* v. *Hallock*, 309 U. S. 106, and in other cases, to the effect that niceties of conveyancing will not be permitted to relieve a decedent's estate of taxation. The *Hallock* case, as well as the *Klein* case, *supra*, *Helvering* v. *St. Louis Trust Co.*, 296 U. S. 39, and *Becker* v. *St. Louis Trust Co.*, 296 U. S. 48, referred to in the *Hallock* case, each involved a trust under which the settlor retained an *express* right to get the trust *res* back under certain conditions.[6]

6. The *Hallock* case involved three different trusts (see *Helvering* v. *Hallock*, 309 U. S. 106, 115):

One trust gave the income to the settlor's wife for life, with this further provision:

"If and when Anne Lamson Hallock shall die then and in such event * * * the within trust shall terminate and said Trustee shall * * * pay Party of the First Part if he then be living any accrued income, then remaining in said trust found and *shall * * * deliver forthwith to Party of the First Part, the principal of the said trust fund.* If and in the event said Party of the First Part shall not be living then and in such event payment and delivery over shall be made to Levitt Hallock and Helen Hallock, respectively son and daughter of the Party of the First Part share and share alike * * *."

The Party of the First Part was the settlor.

A second *Hallock* trust involved an ante-nuptial agreement which conveyed property in trust, the income to be paid to the prospective wife during her life, subject to the following disposition of the principal:

"In trust if the said Rae Spektor shall die during the lifetime of said George F. Uber *to pay over the principal and all accumulated income thereof unto the said George F. Uber in fee* free and clear of any trust.

"In trust if the said Rae Spektor after the marriage shall survive

The *Hallock* opinion held that, in view of the fact that each of the settlors in the *Hallock* trusts, the *Klein* conveyance and the two *St. Louis Trust Co.* trusts, could, by the express provisions of the respective trust, get the property in question back upon the happening of a certain contingency or contingencies, it made no difference whether the right retained by the settlor was a right of reverter, remainder or reversion, or whether the preceding estates were contingent or vested. The settlor, in each of those cases, had *expressly* reserved the right, under certain cir-

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the said George F. Uber to pay over the principal and all accumulated income unto the said Rae Spektor—then Rae Uber—in fee, free and clear of any trust.'"

Uber was the settlor.

A third *Hallock* trust provided for payment of trust income to the wife during her life and, upon her death, to the settlor if he should survive the wife, and continued:

"'Upon the death of the survivor of said Ida Bryant and the party of the first part, unless this trust shall have been modified or revoked as hereinafter provided, *to convey, transfer, and pay over the principal of the trust fund to the executors or administrators of the estate of the party hereto of the first part.*'"

The party of the first part was the settlor.

The remainder in the *Klein* case was created by a deed, the habendum clauses of which were as follows:

"'First. To have and to hold the said lands unto the said grantee for and during the term of her natural life, and if she shall die prior to the decease of said grantor then and in that event she shall by virtue hereof take no greater or other estate in said lands and the reversion in fee in and to the same shall in that event *remain vested* in said grantor, his heirs, and assigns, such reversion being hereby reserved to said grantor and excepted from this conveyance.

"'Second. Upon condition and in the event that said grantee shall survive the said grantor, then and in that case only the said grantor shall by virtue of this conveyance take, have, and hold the said lands in fee simple, unto the sole use of herself, her heirs, and assigns forever.'" (*See Klein* v. *United States*, 283 U. S. 231, 232.)

The trust in the first *St. Louis Trust Co.* case provided that the income of the trust was to be paid to the settlor's daughter during her life, but at her death "*if the grantor still be living, the trustee shall forthwith * * * transfer, pay and deliver the entire estate to the grantor, to be his absolutely.*" But "if the grantor be then not living" then the income was to be paid to the settlor's wife if she were living, and upon the death of both daughter and wife, if the settlor were not living, the trust property was to go to the daughter's children, or if she left none, to the grantor's next of kin (*See Helvering* v. *Hallock*, 309 U. S. 106, 112-113).

In the second *St. Louis Trust Co.* case, the income of the trust was to be accumulated or paid over to the daughter of the settlor during her life. The instrument further provided that "*if the said beneficiary should die before my death, then this trust estate shall thereupon revert to me and become mine immediately and absolutely*, or * * * if I should die before her death, then this property shall thereupon become hers immediately and absolutely * * *." (*See Helvering* v. *Hallock*, 309 U. S. 106, 113.)

cumstances, to get the property back and the reservation was held sufficient to require inclusion of the trust property in the gross taxable estate of the decedent-settlor, regardless of the nature, character or name of the reservation.

Commissioner v. *Estate of Field*, 324 U. S. 113, cited by this Court in its opinion, likewise involved a trust under the express provisions of which the settlor was to receive income for life and, if two nieces predeceased him, the corpus was to be distributed to the settlor. Further, if he died prior to the death of the two nieces, leaving issue, the corpus was to be held in trust for his widow and his children or their issue, subject to the right of the settlor to reduce or cancel the amount by will or written instrument. The Supreme Court said (p. 116):

> "Thus, until decedent's death it was uncertain whether any of the corpus would pass to the beneficiaries or whether it would revert to the decedent."

In *Fidelity-Philadelphia Trust Co.* v. *Rothensies*, 324 U. S. 108, the trust agreement also expressly provided for the payment of income to the settlor for life, and that, upon her death, the property was to go to her daughters and their descendants, but that, if both daughters died without leaving descendants who survive the settlor, the corpus would be paid over to such persons as the settlor might appoint by will, and, in default thereof, to certain named charities. The court said (p. 111):

> "The ultimate disposition of all the trust property was suspended during the life of the decedent. Only at or after her death was it certain *whether the property would be distributed under a power of appointment as provided in the trust instrument*. The life estates of the daughters were contingent upon their surviving their mother and took effect in enjoyment only at the death of the latter. * * * Thus until the

moment of her death or until an undetermined time thereafter, *the decedent held a string or contingent power of appointment over the total corpus of the trust.*"

In the instant case, Spiegel retained no express right to have the trust property distributed to him, as in the *Hallock* and *Field* cases, nor any right to reduce or cancel amounts which beneficiaries could take, as in the *Field* case, nor any power of appointment over the corpus of the trust, as in the *Fidelity-Philadelphia Trust Co.* case.

The Supreme Court decisions all deal with instances where the settlor of a trust retains, under the *express provisions* of the trust, a right either to get the property back or to control its devolution by exercise of a power of appointment. In those instances of express provision for reverter or control, the Supreme Court has said categorically that it is not interested in what name is given to the rights retained by the settlor or whether the estates of beneficiaries are vested or contingent. Regardless of the technical rules of conveyancing and the name given his interest, the settlor, in those cases, could by express provision of the trust either have gotten the property back or controlled its passage and that was held sufficient to make it taxable to his estate.

Subsequent to the *Hallock* decision, cases arose in which settlors of trusts retained no express right ever to get the trust property back or to control it. In dealing with those cases, the Federal Courts have, in several decisions, held that, even though there is no express right of reverter retained, nevertheless, if the applicable law operates to give the settlor a right of reverter under certain conditions, the property, which may possibly be subject to such right of reverter, will be included in the gross estate of the settlor-decedent. The right of a settlor to receive back trust property under rules of law, upon the occurrence of certain

events, has been termed "a possibility of reverter by operation of law".

However, a "reverter by operation of law" means exactly what it says. It means that the settlor has a right, under certain conditions, to have the trust property revert to him by operation of local property law upon the trust. Such a right, if it existed, would, upon the conditions occurring, entitle the settlor to compel the trustee to turn over the trust property to the settlor and, if the property were not voluntarily so turned over, to require the trustee to transfer the trust property to the settlor through court proceedings. However whether the settlor has such a right to receive back the trust *res*, and to enforce such right in a court, must be determined by local law—in this case Illinois law.

In view of the fact that Spiegel, in 1920, gave his three named children vested remainders in the trust property, subject to divestment only upon the specific conditions subsequent set out in the trust agreement, and did not make any provision for the return of the property to himself under any conditions, then, under the settled Illinois law, Spiegel could never receive the property back. If all the named children had died, and all of their children and descendants had likewise died, prior to the death of Spiegel; Spiegel would still have acquired *no* interest in the remainders. Such remainders, having vested upon the creation of the trust, would, upon the death of the named children prior to Spiegel's death, have passed under the will, or descended as intestate property, of the three named children of the settlor. See discussion and authorities under Points II and III, *supra*. As the court said in *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339, 346:

> "* * * the trust, for all practical purposes, had passed as completely from any control by decedent which might inure to his own benefit as if the gift had been absolute."

Thus, the instant case presents a situation (a) where the settlor retained no *express* right to recover back the trust property and, further (b) where, under the law of Illinois, he could not possibly recover the property back. The case at bar presents a case of *impossibility* of reverter by operation of law, *not* a case of possibility of such reverter.

Since Spiegel had no rights in the trust property at the date of his death, and at the date of his death there was no "string" attached to that property which, under any conceivable circumstances, could pull the property back to Spiegel, there was no property interest growing out of the trust which could be included in his gross estate for estate tax purposes.

V.

A Decision by This Court That the Trust Property Is Not Includable in Spiegel's Gross Estate Will Not Affect Uniformity of Administration of the Estate Tax Laws.

The Court in its opinion states that (p. 5):

> "It must always be remembered that we are dealing with a tax law that Congress intended should be uniform in its application, and that the provision we are dealing with was one to be used to close the escape mechanism of gifts *inter vivos* when the same transfer of property if made by will would be taxable. Congress did not intend that the tax liability should depend upon the name given to the piece of paper."

There is no provision of law, and no policy, which prevents the making of an outright gift *inter vivos*, thereby relieving the donor of estate tax liability. The provisions of the gift tax law cover such a gift. There is likewise no law or policy against a gift in trust of all interest in property. See, *Reinecke* v. *Northern Trust Company*, 278 U. S. 339, 347. The gift tax law covers that type of gift.

If, however, a gift is made in trust and the settlor expressly reserves a right to get back the trust property under certain conditions, then, under the *Hallock* decision, the trust property will uniformly be included in the gross estate of the settlor regardless of "the niceties of the law of conveyancing."

Further, if it is the law that, in instances where a gift in trust is made and a possibility of reverter by operation of local property law exists, the trust property will be included in the settlor-decedent's gross estate, then, in every case of a trust which does not contain any express right of reverter but in connection with which the local applicable property law will enforce a right of reverter in favor of the settlor, the trust property, subject to such possibility, will, likewise, uniformly be included in the gross estate of the settlor for estate tax purposes.

However, a possibility of reverter by operation of law does not exist in connection with every trust which does not expressly provide for a reverter. Each trust, which does not contain an express provision for reverter, must be examined and the possibility or impossibility of reverter by operation of law determined in the light of the local property law. It therefore follows that all trusts, which do not contain an express right of reverter, will not uniformly, and cannot properly, be held to provide a possibility of reverter by operation of law. This, however, does not affect the uniformity of administration of the estate tax law. Even though the estate tax law may uniformly include in gross estate all property with respect to which a possibility of reverter by operation of law does, in fact, exist, it cannot, we submit, be seriously contended that uniformity requires the inclusion in the gross estate of the settlor of all trust property, even though he has no right, under any circumstances, to get the property back.

Where there is no *express* right of reverter, the ques-

tion as to whether estates in remainder, created by a trust, are vested or contingent becomes of great importance. The determination of the character of the remainder may very well, as is the case of Illinois trusts, determine whether or not the settlor can, under any circumstances, obtain the property back by operation of Illinois law. If he cannot, then he has retained no "string" on the property and his estate cannot be held liable for estate taxes in connection therewith.

VI.

The Court Did Not Give Proper Weight to the Decision of the Tax Court.

This Court refused to follow the decision of the Tax Court in the instant case and said in its opinion (p. 6):

> "In two decisions published about the same time as the decision of the Tax Court in the instant case and not mentioned therein, the Supreme Court has given full sweep to the taxing power of Congress and the freest interpretation to Section 811(c) of the Code."

This Court was referring to *Commissioner v. Field*, 324 U. S. 113, and *Fidelity-Philadelphia Co. v. Rothensies*, 324 U. S. 108.

The Tax Court has not overlooked these cases. As recently as December 16, 1946, the Tax Court in *Estate of Edward P. Hughes*; 7 T. C., No. 157, C. C. H. Decision No. 15,510, considered these decisions and adhered to its earlier rulings to the effect that the estate tax does not require inclusion of trust property in a decedent's estate where there is no express provision for the property coming back to the settlor and only a remote chance of reverter by operation of law. In the *Hughes* case it was assumed that there was a remote right of reverter by operation of law,

7. See Respondent's Brief, p. 38, *et seq.*

and the taxpayer did not deny such possibility. In the instant case, of course, there is no possibility, remote or otherwise, of the trust property reverting to the settlor.

In the instant case (R. 129), the Tax Court held that:

> "The decedent in creating the trust retained no 'string or tie' amounting to a possibility of reverter, and hence the doctrine of *Helvering* v. *Hallock*, 309 U. S. 106, and numerous decisions deriving from it, are not in point."

Assuming that the decision of the Tax Court in the case at bar involved purely a question of law, nevertheless this Court should give serious consideration and great weight to the Tax Court's decision that the settlor, Spiegel, retained no interest whatsoever in the trust property, and that the *Hallock* and related cases are not applicable.

As stated by Mr. Justice Jackson, in *Dobson* v. *Commissioner*, 320 U. S. 489, 502:

> "* * * In deciding law questions courts may properly attach weight to the decision of points of law by an administrative body having special competence to deal with the subject matter. The Tax Court is informed by experience and kept current with tax evolution and needs by the volume and variety of its work. While its decisions may not be binding precedents for courts dealing with similar problems, uniform administration would be promoted by conforming to them where possible."

In *Brooklyn National Corporation* v. *Commissioner*, 157 F. (2d) 450 (C. C. A. 2nd, 1946), cited on page 52 of Respondents' Brief, the Court, affirming a decision of the Tax Court directly contrary to an opinion of the Second Circuit on the same point, said (p. 452):

> "* * * our power to review a ruling of the Tax Court is very much more limited than in the case of a District Court. * * * As we understand it, before we

may substitute our own interpretation of a provision of the Revenue Act, not only must a naked question of law detach itself from the nexus of law and fact in the record as a whole; *but we must conclude that the Tax Court has been indubitably wrong in its decision of the question which emerges; reasonable differences in legal opinion we are to resolve in its favor.* We have recently discussed the matter in *Kirschenbaum v. Commissioner*, 155 F. 2d 23, and have now nothing to add to what we said." (Italics ours.)

To the same effect, see *Paul*, Dobson v. Commissioner: The Strange Ways of Law and Fact, 57 Harv. L. Rev. 752, 778-9 (1944).

Conclusion.

Since, under the controlling Illinois law, Spiegel retained no interest whatsoever in the trust property, and no possibility of any interest therein, his estate should not be taxed merely because, if the trust instrument had been drawn in different terms, he might have had a reverter interest by operation of law.

We submit with confidence that, when this Court has given the record herein and the pertinent authorities another critical examination, a rehearing will be granted and the error of the Court rectified.

We, therefore, respectfully pray that this Petition for Rehearing be granted and that the Petition for Review of the decision of the Tax Court be denied.

January 10, 1947.

HERBERT A. FRIEDLICH,
HARRY THOM,
LOUIS A. KOHN,
Attorneys for Respondents.

MAYER, MEYER, AUSTRIAN & PLATT,
Of Counsel.

Endorsed: Filed January 11, 1947. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-third day of January, 1947, the following further proceedings were had and entered of record, to-wit:

Thursday, January 23, 1947.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

Commissioner of Internal Revenue, *Petitioner.*	Petition for Review of Decision of The Tax Court of the United States.
No. 8932 *vs.*	
Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	

It is ordered by the Court that the Petition for a Rehearing of this cause be, and it is hereby, denied.

And afterwards, to-wit: On the thirty-first day of January, 1947, the Mandate of this Court issued to The Tax Court of the United States.

And afterwards, to-wit: On the tenth day of February, 1947, there was filed in the office of the Clerk of this Court, a Motion to Recall and Stay Mandate, which said Motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Commissioner of Internal Revenue, *Petitioner,* vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.
No. 8932	

MOTION TO RECALL AND STAY MANDATE.

Now come Respondents herein by their attorneys, Herbert A. Friedlich, Harry Thom and Louis A. Kohn, and move the court to stay and recall the mandate issued herein on January 31, 1947 for thirty (30) days pursuant to the provisions of Rule 25, and in support of said motion present the Suggestions of Herbert A. Friedlich, one of the attorneys for Respondent, dated February 10, 1947.

Herbert A. Friedlich,
Harry Thom,
Louis A. Kohn,
Attorneys for Respondents.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Commissioner of Internal Revenue, *Petitioner*, vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.

No. 8932

SUGGESTIONS IN SUPPORT OF MOTION FOR RECALL AND STAY OF MANDATE.

In support of the motion of respondents herein for recall and stay of mandate in the above entitled cause, Herbert A. Friedlich, one of the attorneys for said respondents states:

Respondents' petition for rehearing in said cause was denied on January 23, 1947, and the mandate of this court in this cause was issued and forwarded to the Clerk of the Tax Court at Washington, D. C. on January 31, 1947. Respondents have since determined to make application for certiorari to the Supreme Court of the United States in order to obtain a review of the judgment of this court and intend to perfect such application within the time provided by law.

Herbert A. Friedlich,
One of the Attorneys for Respondents herein.

February 10, 1947.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Commissioner of Internal Revenue, *Petitioner,* vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.

No. 8932

NOTICE.

To:

Sewell Key, Acting Assistant Attorney General,
Melva M. Graney, Special Assistant to the Attorney General,
Department of Justice,
Washington 25, D. C.

You Are Hereby Notified that we will on behalf of Respondents herein on this 10th day of February move the United States Circuit Court of Appeals for the Seventh Circuit, before whom the above cause is pending, for a recall and stay of mandate in accordance with the provisions of Rule 25 of said court, a copy of which motion and supporting suggestions is herewith served upon you.

Herbert A. Friedlich,
Harry Thom,
Louis A. Kohn,
Attorneys for Respondents.

February 10, 1947.

State of Illinois, }
County of Cook. } ss.

Vernon Misch, being duly sworn, says that he is employed by the law firm of Mayer, Meyer, Austrian & Platt, of Chicago, Illinois, and that on the 10th day of February, 1947, at the hour of 12:30 P. M. he served a copy of the attached motion together with a copy of the suggestions referred to in said motion upon each of the persons named in the attached notice by depositing in the United States Mails at Chicago, Illinois, said notice and copy of said motion and suggestions enclosed in a sealed envelope, postage prepaid, addressed to the said persons.

Vernon Misch.

Subscribed and sworn to before me this 10th day of February, 1947.

Alfred G. Johnson,
Notary Public.

Endorsed: Filed February 10, 1947. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the seventeenth day of February, 1947, the following further proceedings were had and entered of record, to-wit:

Monday, February 17, 1947.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

Commissioner of Internal Revenue, *Petitioner*, vs. Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents*.	Petition for Review of Decision of The Tax Court of the United States.
No. 8932.	

On motion of counsel for respondents, it is ordered that the Mandate of this Court, heretofore issued in this cause on January 31, 1947, be, and the same is hereby, recalled and stayed for a period of thirty (30) days pending respondents' application to the Supreme Court of the United States for a writ of certiorari.

And afterwards, to wit: On the twenty-sixth day of February, 1947, there was filed in the office of the Clerk of this Court, a Notice and Suggestion of Death, which said Notice and Suggestion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 8932.

Commissioner of Internal Revenue, *Petitioner,* *vs.* Estate of Sidney M. Spiegel, Deceased, *et al.*, etc., *Respondents.*	Petition for Review of Decision of The Tax Court of the United States.

NOTICE.

To: Sewell Key, Acting Assistant Attorney General, Melva M. Graney, Special Assistant to the Attorney General, Department of Justice, Washington 25, D. C.

You Are Hereby Notified that we will on behalf of the Respondents herein on the 26th day of February, 1947 move the United States Circuit Court of Appeals for the Seventh Circuit for the entry of an order substituting Katherine J. Spiegel and Robert Michels, Surviving Executors under the Last Will and Testament of Sidney M. Spiegel, Deceased, as Petitioners (Respondents) herein in lieu of Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels as Executors aforesaid, it appearing that said Sidney M. Spiegel, Jr. has departed this life as set forth in the suggestion herewith served upon you together with this motion.

Herbert A. Friedlich,
Harry Thom,
Louis A. Kohn,
Attorneys for Respondents.

February 25th, 1947.

SUGGESTION.

In support of the aforesaid motion, Herbert A. Friedlich, one of the attorneys for said Petitioners (Respondents) states that Sidney M. Spiegel, Jr., one of the aforesaid Executors under the Last Will and Testament of Sidney M. Spiegel, Deceased, departed this life on October 19, 1944, and that said Katherine J. Spiegel and Robert Michels are now the duly qualified and acting Surviving Executors under the Last Will and Testament of Sidney M. Spiegel, Deceased.

Herbert A. Friedlich.

State of Illinois, } ss.
County of Cook. }

Vernon Misch, being duly sworn, says that on the 25th day of February, 1947, at the hour of 12:55 P. M., he served a copy of the attached Notice of Motion upon each of the persons named therein, by depositing in the United States Mails at Chicago, Illinois, said notice enclosed in a sealed envelope, postage prepaid, addressed to said persons.

Vernon Misch.

Subscribed And Sworn to before me this 25th day of February, 1947.

Alfred G. Johnson,
(Seal) *Notary Public.*

Endorsed: Filed February 26, 1947. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the twenty-sixth day of February, 1947, the following further proceedings were had and entered of record, to wit:

Wednesday, February 26, 1947.

Court met pursuant to adjournment.

Before:

Honorable Evan A. Evans, Circuit Judge.

Commissioner of Internal Revenue,

Petitioner,

No. 8932 *vs.*

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.,

Respondents.

On suggestion of counsel for respondents, it is ordered that Katherine J. Spiegel and Robert Michels, Surviving Executors under the Last Will and Testament of Sidney M. Spiegel, Deceased, be substituted as respondents herein in lieu of Sidney M. Spiegel, Jr., Katherine J. Spiegel and Robert Michels as Executors aforesaid, it appearing that the said Sidney M. Spiegel, Jr. is now deceased.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth S. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (excepting stipulation extending time for Respondents' Brief), in:

Cause No. 8932.

Commissioner of Internal Revenue;
Petitioner,

vs.

Estate of Sidney M. Spiegel, Deceased, *et al.*, etc.,
Respondents,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 27th day of February, A. D. 1947.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI — Filed April 28, 1947.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.